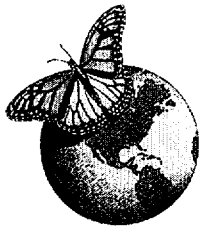

Union of Concerned Scientists

April 2, 2001

Mr. Frank Congel, Director
Office of Enforcement
US Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: COMMENTS ON PROPOSED REVISION TO NRC ENFORCEMENT POLICY ON ACTIONS TAKEN AGAINST INDIVIDUALS

Dear Mr. Congel:

According to a *Federal Register* notice dated March 9, 2001 (Vol. 66, No. 47), the NRC is seeking public comment through April 22, 2001, on a proposed change to its policy regarding actions taken against individuals. On behalf of the Union of Concerned Scientists (UCS), I have reviewed these proposed changes and provide the following comments.

UCS disagrees with the staff's assertion that "these proposed changes will help to make the Enforcement Policy easier for all stakeholders to understand and easier for internal stakeholders to implement." We disagree because the proposed changes do not address the two major flaws in the current policy—subjectivity and secretiveness. Each of these two flaws is discussed in detail as follows:

> Subjectivity: UCS examined the information available on twenty-three enforcement actions taken by the NRC in the past two years against nuclear power industry workers. We also reviewed the information available on thirteen cases in the same period where the NRC did not take enforcement action against nuclear power industry workers for comparable behavior. The results from that review are documented in the enclosed UCS report. Basically, we concluded that the NRC is not achieving its goal of "responding to violations of regulations in a predictable and consistent manner that reflects the potential safety impact of the violations."
>
> As shown in our report, the staff's implementation of the current enforcement policy enabled it to render wide-ranging sanctions for remarkably similar violations. That undesirable capability seems to be retained in the proposed enforcement policy changes. For example, almost every end point in the flow chart for the proposed changes is immediately preceded by an input labeled 'AC' for Additional Circumstances. The staff states that additional circumstances enable it "to either refrain from taking action or propose a different action to ensure that the agency position takes into consideration all of the relevant circumstances of the particular case." In other words, the staff will continue to dole out enforcement decisions as per usual. The staff is not implying that it failed to consider all of the relevant circumstances in the past. So why should there be any assurance that future decisions will be less subjective?

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The flow chart as proposed is flawed. It includes decision points labeled 'Repetitive?' and 'Numerous examples over extended period of time?'. Setting aside for the moment that 'Numerous examples over extended period of time' strikes most external stakeholders as being a subset of 'Repetitive,' and thus is itself repetitive, the outcomes from two virtually identical questions yields totally different results. The 'Repetitive' point is reached first. If the NRC staff determines that the individual's violations were repetitive, the flow chart proceeds immediately to 'Consider Order to Individual' with no further inquiries. But if the NRC staff determines that the individual's violations were not repetitive, the flow chart proceeds through a series of five more inquiries involving severity level and success in engaging co-conspirators before reaching the 'Numerous examples over extended period of time' point. Since one has to answer the 'Repetitive' inquiry NO in order to reach the 'Numerous examples over extended period of time' inquiry, the obvious question is therefore how the NRC staff could ever find an individual guilty of numerous examples over extended period of time but not guilty of repetition. Even if the staff achieved this amazing feat of splitting hairs, the ultimate sanctions are different. The sanction for 'Repetitive' violations is a possible order. The sanction for numerous examples over extended period of time is a notice of violation. That doesn't make sense on many levels. Why does the staff view repeated violations as being worse than numerous examples of violations over time?

UCS anticipates that the NRC staff will split hairs by claiming that it applies 'repetitive' to situations where the individual has already received one or more violations and that it reserves 'numerous examples over extended period of time' for situations where the individual just didn't get caught until recently. But in all cases, the flow chart shows that the NRC staff will have already determined that the individual's action was either willful or deliberate misconduct.

The 'repetitive' and 'numerous examples over extended period of time' factors appear little more than the staff's latest gambit to aggregate things. The staff was finally dissuaded of that subjective practice in the reactor oversight process. Likewise, the staff should abandon that practice with respect to sanctions against individuals.

UCS recommends that the 'Repetitive' and 'Numerous examples over extended period of time' decision diamonds be deleted from the flow chart and enforcement guidance. If retained, the guidance must be made explicit on what is meant by 'repetitive' (e.g., discrimination against the same poor worker, discrimination against a poor worker at a different nuclear plant, discrimination of a new and innovative variety against a different poor worker — repetitive or not?) and what is meant by 'numerous examples over an extended period of time' (e.g., three examples in 25 years, two examples in six months, 25 examples in one year, 1 example every year for nine straight years — numerous enough or not?).

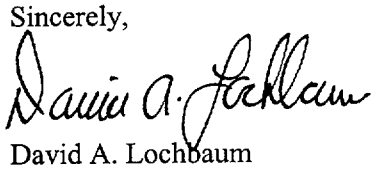
Secretiveness:

The outcome of the current enforcement policy is publicly available via either a letter to the affected individual. If no enforcement action is warranted (or taken, not always one and the same), there may be a publicly available letter to the applicable plant owner indicating that the NRC's investigation is complete and no further action will be taken. In either case, the information that is publicly available is insufficient for external stakeholders to really understand why enforcement was, or was not, taken. I know this to be true because every single time that I question NRC enforcement action and inaction based on my reading of publicly available information, the NRC staff defends their decision using information that they did not put in the publicly available information. In other words (literally), the NRC staff provides me the extenuating factors or additional circumstances that really drove their decision-making process.

The proposed changes to the NRC's enforcement policy do not address this problem because they do not instruct the staff to document, in publicly available information, the real reasons for their enforcement decisions. If the flow chart for NRC enforcement actions for individuals contains a little input labeled 'AC' (Additional Circumstances) before every single end point, then it is absolutely imperative that the NRC staff openly document every single additional circumstance that it applies to heighten or lessen enforcement decisions.

The proposed changes to the enforcement policy allows the NRC staff to continue making subjective enforcement decisions without publicly documenting their rationale. UCS recommends that the enforcement policy guidance contain explicit instructions for the NRC staff to clearly document in publicly available records any and all extenuating factors and additional circumstances for enforcement actions involving individuals.

Sincerely,



David A. Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists
Washington Office

Enclosure: UCS report titled "Nuclear Regulatory Commission Enforcement Policy and Practices Regarding Nuclear Plant Workers Who Violated Federal Safety Regulations in 1999 and 2000."

Union of Concerned Scientists

Nuclear Regulatory Commission Enforcement Policy and Practices Regarding Nuclear Plant Workers Who Violated Federal Safety Regulations in 1999 and 2000

David Lochbaum
Nuclear Safety Engineer

April 2001

Executive Summary

It was nearly a year ago that the Nuclear Regulatory Commission (NRC) directed its staff to implement the revised reactor oversight process.[1] The NRC's inspection program, assessment program, and enforcement program were all revised in the new reactor oversight process. The NRC established the following objective for its enforcement program under the revised reactor oversight process:

> "Responding to violations of regulations in a predictable and consistent manner that reflects the potential safety impact of the violations"[2]

UCS reviewed the majority of enforcement actions taken by the NRC against individuals within the nuclear power industry over the past two years. To the extent that they could be identified, UCS also reviewed the enforcement actions not taken by the NRC against individuals found to have committed similar offenses during the same period. A two-year review period enabled a comparison of NRC enforcement actions taken during the first year of implementation of the revised reactor oversight process to those actions during the final year of the prior program. UCS focused its review on sanctions against individuals under 10 CFR 50.5 so as to provide an 'apples to apples' comparison.

UCS concluded that the NRC failed to achieve its objective for the enforcement program because its response to violations of regulations was not predictable, not consistent, and—most disturbing—not commensurate with the potential safety impacts. For example, the NRC banned two individuals from working on NRC-licensed activities because they falsified their employment applications. For virtually identical offenses, another individual merely received a warning letter while two other individuals received no sanctions whatsoever. In another example, the NRC imposed a three-year ban on one individual who failed to test some security firearms annually and falsified records to indicate the tests had been performed. But the NRC merely issued a warning letter to another person who failed to inspect fire protection equipment and falsified records to indicate the inspection had been performed. The NRC's response to violations by individuals was neither predictable nor consistent.

The most disconcerting finding was that the NRC only issued warning letters to seven of the eight nuclear plant managers that the agency determined had engaged in deliberate misconduct by discriminating against workers who raised safety concerns. The eighth manager received no sanction at all, not even a warning letter. The threat to public health and safety from managers and supervisors suppressing safety concerns was far greater than that posed by a clerk who fudged an employment application or a security staffer who failed to test firearms. Yet the NRC only issued warning letters to the managers and supervisors while banning the clerk and the security staffer from the industry for at least three years. The NRC imposes sanctions that appear inversely proportional to their safety significance and thus in direct opposition to the agency's stated objective.

UCS discovered one major flaw in the NRC's enforcement policy. Under the existing policy, licensed control room operators testing positive for drug or alcohol only get a warning letter for the first violation and may get a three-year license suspension for the second violation. The NRC merely issued warning letters to four licensed operators who admitted to cocaine usage or tested positive for drugs or alcohol in past two years. These are much more lenient sanctions than the agency imposed on workers who falsify employment applications. From a risk perspective, a control room operator under the influence of drugs

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[1] Annette Vietti-Cook, Secretary, Nuclear Regulatory Commission, to William D. Travers, Executive Director for Operations, Nuclear Regulatory Commission, "Staff Requirements - SECY-00-0049 - Results of the Revised Reactor Oversight Process Pilot Program (Part I)," March 28, 2000.

[2] Nuclear Regulatory Commission, "Reactor Oversight Process," NUREG-1649 Rev. 3, July 2000.

or alcohol represents a greater threat to public health and safety. The NRC's enforcement actions have not reflected this reality.

These disproportional sanctions may explain diverging trends over the past three years. The number of alleged false statements investigated by the NRC during 1998, 1999, and 2000 shows a declining trend. On the other hand, the number of alleged discrimination cases investigated by the NRC over this same period is increasing approximately 10 percent annually. If sanctions truly serve to help communicate the agency's expectations, the data suggest that the NRC needs to impose sanctions for discrimination violations that are at least as severe as those imposed for false statement violations.

Introduction
UCS reviewed twenty-three (23) cases where the NRC took enforcement action against individuals working within the nuclear power industry in the past two years. UCS excluded from this review cases involving enforcement actions taken against non-power licensed activities such as medical and industrial uses of radioisotopes. UCS also reviewed thirteen (13) cases over the same period where the NRC took no enforcement action against individuals working within the nuclear power industry after determining they were guilty of remarkably similar offenses as in the 23 cases. These 36 cases, along with verbatim summaries extracted from the NRC source documents, are listed on Attachments 1, 2, 3, and 4. Attachment 1 lists the three cases where the NRC issued an order banning the individuals from NRC-licensed activities for three years. Attachment 2 lists the case where the NRC issued an order banning the individual from NRC-licensed activities for one year. Attachment 3 lists the nineteen (19) cases where the NRC issued either a Notice of Violation or Letter of Reprimand. Last and least, Attachment 4 lists the thirteen (13) cases where the NRC took no enforcement action whatsoever for comparable violations.

Prior to reviewing these case documents, UCS reviewed the deliberate misconduct rule (§50.5 of 10 CFR[3]), the NRC's Enforcement Policy[4] and its Enforcement Manual[5] to understand the applicable rule, policy, and procedures. Section VIII of the Enforcement Policy lists specific examples of situations that could result in enforcement actions being taken against individuals. UCS created a matrix with the top ten of these examples as rows and the twenty-three enforcement cases as columns. This matrix appears as Table 1 in this report. During the review of the case documents involving enforcement action, UCS put a checkmark (✓) in the appropriate row and column when the NRC explicitly specified that prototypical behavior was evident. Table 2 provides similar information for the non-enforcement actions, or the enforcement inactions.

The findings from the review of the 36 cases were sorted into four categories:

1. Dissimilar Punishments - for apparently identical violations, the NRC imposed harsh sanctions in some cases and no sanctions in others

2. Disproportionate Punishments - the NRC imposed harsh sanctions for seemingly benign violations while imposing light or even no sanctions for very significant violations

3. Dislikable Punishments - the NRC imposed light or no sanctions for deliberate misconduct of managers in retaliating against workers who raised safety concerns

4. Enforcement Policy Flaws - the NRC allows licensed operators to violate the fitness for duty regulations without receiving a harsher sanction than a warning letter

The following sections discuss these four categories in depth.

Dissimilar Punishments
UCS identified many instances where the NRC imposed significantly different sanctions for remarkably similar infractions. These instances suggest that the NRC has not achieved its stated objective of responding to violations of regulations in a predictable and consistent manner. These apparent inconsistencies are summarized below:

[3] Available on the internet at http://www.nrc.gov/NRC/CFR/PART050/part050-0005.html.
[4] Nuclear Regulatory Commission, "General Statement of Policy and Procedure for NRC Enforcement Actions," October 4, 2000.
[5] Nuclear Regulatory Commission, "NRC Enforcement Manual," NUREG/BR-0195 Rev. 3.

- VanCleave / Reed: After determining that Mrs. VanCleave used false social security number information to gain employment as a clerk at the D C Cook nuclear plant, the NRC issued an order banning her from NRC-licensed activities for three years.[6] After determining that Mr. Reed concealed criminal history to gain employment at the Salem, Point Beach, and D C Cook nuclear plants and misrepresented, under oath, his criminal history to NRC investigators, the NRC issued an order banning him from NRC-licensed activities for one year.[7] These infractions were similar. If anything, Mr. Reed's violation was worse than Mrs. VanCleave's because it was repetitive and was compounded by essentially lying to the NRC investigators. However, Mrs. VanCleave reportedly told the NRC that she would do it again if faced with a similar situation while Mr. Reed was silent on the subject. So, it appears that the NRC rewarded Mrs. VanCleave with two additional years for being honest about her dishonesty. Mr. Reed, who did indeed do it again and essentially lied to the NRC during the investigation of his case, was somehow viewed by the agency as more credible and trustworthy than Mrs. VanCleave.

- VanCleave / Johnson: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that Mr. Johnson concealed criminal history (at least four criminal charges) to gain employment at the Surry and Turkey Point nuclear plants, the NRC issued him a Notice of Violation.[8] Mrs. VanCleave's concealed a single misdemeanor conviction at a single nuclear plant and was banned for three years. Mr. Johnson concealed four criminal convictions at two nuclear plants and got a warning letter. The reason for the disparate sanctions for similar violations is unknown. If anything, it would appear that Mrs. VanCleave warranted lighter—not heavier—sanctions because her infraction was confined to a single facility whereas Mr. Johnson repeated his infraction at two facilities.

- Reed / Johnson: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As detailed previously, Mr. Johnson got a letter from the NRC because he concealed information when applying for access at the Surry and Turkey Point nuclear plants. The reason for the disparate sanctions for similar violations is unknown.

- Reed / Unnamed Surry Worker: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. After determining that a worker at the Surry nuclear plant failed to report an arrest while employed at the plant, the NRC issued the plant owner a non-cited violation and imposed zero sanctions on the individual.[9] The worker told the plant owner that he or she was unaware of the arrest. The plant owner determined that the individual had in fact been arrested, had received training on the requirement to

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[6] Frank J. Miraglia, Jr., Deputy Executive Director for Reactor Programs, Nuclear Regulatory Commission, to Mrs. Gail C. VanCleave, "Order Prohibiting Involvement in NRC-Licensed Activities (NRC Office of Investigations Report No. 3-1999-048)," November 6, 2000.

[7] Frank J. Miraglia, Jr., Deputy Executive Director for Reactor Programs, Nuclear Regulatory Commission, to Mr. Garner W. Reed, "Order Prohibiting Involvement in NRC-Licensed Activities (NRC Office of Investigations Report No. 3-1999-028)," December 4, 2000.

[8] Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. Ronnie Johnson, "Notice of Violation (NRC Integrated Inspection Report Nos. 50-250, 251/99-02)," June 18, 1999.

[9] Kenneth P. Barr, Chief - Plant Support Branch, Nuclear Regulatory Commission, to Mr. David A. Christian, Senior Vice President and Chief Nuclear Officer, Virginia Electric and Power Company, "NRC Inspection Report Nos. 50-280/00-08, 50-281/00-08 and Office of Investigations Report No. 2-2000-013," October 31, 2000.

report arrests, but had still failed to report the arrest.[10] Mr. Reed was banned from NRC-licensed activities for failing to report being arrested years before working at a nuclear plant. The unnamed Surry worker received no sanctions whatsoever for failing to report an arrest while working at a nuclear plant. The explanation for this disparity is unknown.

- VanCleave / Unnamed Surry Worker: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. As detailed previously, an unnamed worker at the Surry nuclear plant failed to report an arrest while employed at the facility despite having been specifically trained on the responsibility to report such arrests. That worker did not even receive a warning letter from the NRC and presumably still works at the plant. The explanation for this disparity is unknown.

- Johnson / Unnamed Surry Worker: As detailed previously, Mr. Johnson received a warning letter from the NRC because he hid his prior criminal record when getting a job at the Surry nuclear plant. As detailed previously, an unnamed worker at the Surry nuclear plant failed to report an arrest while employed at the facility despite having been specifically trained on the responsibility to report such arrests. That worker did not even receive a warning letter from the NRC and presumably still works at the plant. The reason that NRC perceived failure to report old criminal charges as being worse than failure to report current criminal charges is less than clear.

- VanCleave / Unnamed Clinton Staffer: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. The NRC determined that a safety evaluation for the Clinton nuclear plant incorrectly stated that the water level would not drop below the top of active fuel following a feedwater line break and that a Clinton staffer knew about this error but failed to disclose it to the NRC during a meeting about the safety evaluation. Specifically, The NRC determined that "several portions of the SE [safety evaluation] were accurate with respect to fuel coverage, while others were incorrect." On the apparent basis of giving credit for getting some of the safety evaluation correct, the NRC issued the plant's owner a non-cited violation and imposed no sanctions against the staffer.[11] Mrs. VanCleave's offense involved a past indiscretion that had little or no impact on her clerical duties. The unnamed Clinton staffer knew about errors in a safety evaluation and withheld that information from NRC inspectors during a meeting on the safety evaluation. Ms. VanCleave was banned for three years while the unnamed Clinton staffer received no sanctions—not even a measly warning letter— at all from the NRC. It is impossible to figure out why the sanctions in these two cases are so different.

- Reed / Unnamed Clinton Staffer: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As detailed previously, an unnamed Clinton staffer received zero sanctions from the NRC after the agency determined that the individual has knowingly and willfully withheld information about errors and omissions in a

[10] Robert C. Haag, Chief - Reactor Projects Branch 5, Nuclear Regulatory Commission, to Mr. David A. Christian, Senior Vice President and Chief Nuclear Officer, Virginia Electric and Power Company, "Surry Nuclear Power Station - NRC Integrated Inspection Report Nos. 50-280/00-03, 50-281/00-03 and 72-002/00-04," July 17, 2000.
[11] John A. Grobe, Director - Division of Reactor Safety, Nuclear Regulatory Commission, to Mr. Michael T. Coyle, Site Vice President, AmerGen Energy Company, "Non-Cited Violation (Office of Investigations Report No. 3-1999-006)," January 7, 2000.

safety evaluation submitted to the NRC and in oral remarks made to NRC staff members. The reason for such disparate treatment of similar offenses is unknown.

- Johnson / Unnamed Clinton Staffer: As detailed previously, Mr. Johnson received a warning letter from the NRC because he hid his prior criminal record when getting a job at the Surry nuclear plant. As detailed previously, an unnamed Clinton staffer received zero sanctions from the NRC after the agency determined that the individual has knowingly and willfully withheld information about errors and omissions in a safety evaluation submitted to the NRC and in oral remarks made to NRC staff members. The reason for such disparate treatment of similar offenses is unknown.

- VanCleave / Unnamed Senior Health Physics Technician: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that a senior health physics technician at Millstone deliberately falsified documentation that later misled NRC inspectors on a worker contamination incident, the NRC has yet to impose any sanction against the individual.[12] Mrs. VanCleave's offense involved a prior misdemeanor conviction at a non-NRC regulated facility that had no identified impact on her clerical duties. The unnamed senior health physics technician's offense involved an episode at an NRC regulated facility in which several workers were contaminated. It is unclear why the NRC would sanction Mrs. VanCleave so severely yet take no action whatsoever against the senior health physics technician.

- Reed / Unnamed Senior Health Physics Technician: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As detailed previously, an unnamed senior health physics technician at Millstone received zero sanctions from the NRC for having deliberately falsified documentation regarding an incident where workers were radioactively contaminated. It is uncertain why the NRC would ban Mr. Reed while condoning the behavior of the Millstone senior health physics technician.

- Johnson / Unnamed Senior Health Physics Technician: As detailed previously, Mr. Johnson received a warning letter from the NRC because he hid his prior criminal record when getting a job at the Surry nuclear plant. As detailed previously, an unnamed senior health physics technician at Millstone received zero sanctions from the NRC for having deliberately falsified documentation regarding an incident where workers were radioactively contaminated. It is uncertain why the NRC would warn Mr. Johnson about behavior that was far less serious than that of the Millstone senior health physics technician, which was apparently accepted by the NRC.

- VanCleave / Unnamed Roofer: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After learning that an unnamed contract roofer gained access to the McGuire nuclear plant through "willful falsification of information" regarding a prior positive test for illegal drug use, the NRC took no action

[12] James C. Linville, Director - Millstone Inspection Directorate, Nuclear Regulatory Commission, to Mr. R. P. Necci, Vice President - Nuclear Oversight and Regulatory Affairs, Northeast Nuclear Energy Company, "NRC Office of Investigations Report No. 1-1997-036," January 10, 2000.

whatsoever against the individual.[13] It is beyond comprehension why the NRC imposed very harsh sanctions on Mrs. VanCleave yet no sanctions on the unnamed roofer for essentially the same offense.

- Reed / Unnamed Roofer: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As detailed previously, the unnamed roofer at the McGuire nuclear plant received zero sanctions from the NRC for willfully concealing information when applying for access. It is beyond comprehension why the NRC imposed relatively harsh sanctions on Mr. Reed yet no sanctions on the unnamed roofer for essentially the same offense.

- VanCleave / Unnamed Pipefitter: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After learning that an unnamed contract pipefitter withheld information about prior positive tests for illegal drugs on one occasion and alcohol on another in order to gain employment at the South Texas Project nuclear plant, the NRC took no action whatsoever against the individual.[14] It is impossible to understand why the NRC took such harsh enforcement action against Mrs. VanCleave and no action at all against the unnamed pipefitter at the South Texas Project for essentially the same infractions.

- Reed / Unnamed Pipefitter: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As detailed previously, the unnamed pipefitter at the South Texas Project received zero sanctions from the NRC for concealing information when applying for access at the South Texas Project nuclear plant. It is impossible to figure out why the NRC imposed a ban in Mr. Reed's case and took no action at all in the case of the unnamed pipefitter given the nearly identical nature of their infractions.

- VanCleave / Unnamed Dresden Trio: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that an unnamed trio, consisting of one ConEd employee and two contract employees, at the Dresden nuclear plant had provided incomplete and inaccurate information to internal root cause and Event Response Team investigations into the contamination of a pipefitter and that the reports based on this incomplete and inaccurate information were provided to the NRC during a subsequent radiation protection investigation, the NRC concluded that no requirements were violated and imposed no sanctions on the company or the unnamed trio.[15] Mrs. VanCleave willfully provided inaccurate information in order to obtain a clerking job at D C Cook, at a time when both reactors were in cold shut down. The unnamed Dresden trio willfully provided inaccurate information about the contamination of a co-worker to the teams that

[13] H. B. Barron, Jr., Vice President, Duke Energy Corporation, to U.S. Nuclear Regulatory Commission, "McGuire Nuclear Station Unit 1 and Unit 2 / Docket No. 50-369 and 50-370 / Special Report 369/99-02(S), Revision 0 / Problem Investigation Process No. M-99-5040," December 1, 1999.
[14] J. J. Sheppard, Vice President - Engineering and Technical Services, South Texas Project Nuclear Operating Company, to U.S. Nuclear Regulatory Commission, "South Texas Project Unit 1 / Docket No. STN 50-498 / Safeguards Event Report 99-S05 / Unescorted Access Inappropriately Granted," January 5, 2000.
[15] Cynthia D. Pederson, Director - Division of Nuclear Materials Safety, Nuclear Regulatory Commission, to Mr. Oliver D. Kingsley, Jr., President - Nuclear Generation Group, Commonwealth Edison Company, "NRC Office of Investigations Report No. 3-1999-022," December 13, 2000.

were investigating the incident to identify measures for recurrence control. Mrs. VanCleave was banned for three years. The unnamed Dresden trio received absolutely no sanctions from the NRC. It is impossible to even guess why the NRC reached such different enforcement decisions for very similar violations.

- Reed / Unnamed Dresden Trio: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As detailed previously, the unnamed Dresden trio provided incomplete and inaccurate information to two teams investigating the contamination of a co-worker and received zero sanctions from the NRC for it. Mr. Reed willfully concealed information in order to obtain engineering positions at the Salem, Point Beach, and D C Cook nuclear plants. The unnamed Dresden trio willfully provided inaccurate and incomplete information regarding the contamination of a co-worker. Mr. Reed was banned for a year. The unnamed Dresden trio received absolutely no sanctions from the NRC. It is impossible to even guess why the NRC reached such different enforcement decisions for very similar violations.

- Branha / Unnamed Dresden Trio: After determining that Mr. Branha intentionally falsified internal records to indicate that required verifications had been performed when that had not been done, the NRC issued him a Notice of Violation. The verifications involved the planned release of radioactive material from the Salem nuclear plant. The falsifications were discovered and corrected before the material was discharged.[16] As detailed previously, the unnamed Dresden trio provided incomplete and inaccurate information to two teams investigating the contamination of a co-worker and received zero sanctions from the NRC for it. Mr. Branha willfully falsified records regarding the planned release of radioactive material from the Salem nuclear plant. The unnamed Dresden trio willfully provided inaccurate and incomplete information regarding the contamination of a co-worker. Mr. Branha received a Notice of Violation. The unnamed Dresden trio received absolutely no sanctions from the NRC. It is impossible to even guess why the NRC reached such different enforcement decisions for comparable violations.

- Branha / Unnamed Clinton Staffer: As detailed previously, Mr. Branha received a Notice of Violation from the NRC after the agency determined that he falsified records about a planned release of radioactive material from the Salem nuclear plant. The falsifications were identified and corrected before the material was released. Salem's owner received no sanction for the falsification. As detailed previously, an unnamed staffer at the Clinton nuclear plant received no sanction whatsoever for knowing that statement in a safety evaluation and in a presentation to the NRC were untrue, but not informing anyone about it. Clinton's owner received received a non-cited violation for these silences. It is unclear why Mr. Branha received a warning letter while the unnamed Clinton staffer did not. After all, Mr. Branha's offense was corrected before the actual release occurred. But unnamed Clinton staffer's offenses were not corrected until after the safety evaluation was submitted to the NRC and discussed with the NRC. It is also unclear why the plant owner for Clinton was sanctioned but the plant owner for Salem was not. It might have been one of those "one from Column A or one from Column B " things.

- VanCleave / Understahl: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a

[16] Hubert J. Miller, Regional Administrator, Nuclear Regulatory Commission, to Mr. David Branha, "Notice of Violation (NRC OI Investigation 1-98-011)," April 30, 1999.

job as a clerk at the D C Cook nuclear plant. After determining that Mr. Understahl purchased an adulterating agent and placed it in his urine sample taken for the fitness-for-duty program at the Braidwood nuclear plant, the NRC issued him a Notice of Violation warning him that if he did it again, the NRC just might ban him from the industry.[17] How failing to report an old misdemeanor conviction can receive a stiffer sanction than a current violation aimed at masking illegal drug usage at an operating nuclear power plant is beyond comprehension.

- Van Cleave / Watts: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that Mr. Watts purchased an adulterating agent and placed it in his urine sample taken for the fitness-for-duty program at the Braidwood nuclear plant, the NRC issued him a Notice of Violation warning him that if he did it again, the NRC just might ban him from the industry.[18] How failing to report an old misdemeanor conviction can receive a stiffer sanction than a current violation aimed at masking illegal drug usage at an operating nuclear power plant is beyond comprehension.

- Falvey / Cosentino: After determining that Mr. Falvey failed to discharge shotguns used by security forces at the Kewaunee plant and falsifying records to show that the tests had been performed, the NRC issued an order banning him from NRC-licensed activities for three years.[19] After determining that Mr. Cosentino failed to inspect portable fire extinguishers and fire hose stations at the Byron nuclear plant and falsifying records to indicate the required inspections had been performed, the NRC issued him a Notice of Violation.[20] In both cases, all of the neglected equipment did function properly when finally tested and inspected. In both cases, the neglected equipment was a subset of the equipment needed to protect public health and safety. With so many similarities, it is impossible to understand why Mr. Falvey's violation warranted a three-year ban when Mr. Cosentino's violation merely garnered a warning letter.

- Everson / Unnamed Co-conspirator: After determining that Mr. Everson had a handgun in his belongings that was detected by the x-ray equipment at the Zion security and that he helped the x-ray equipment operator erase the photographic evidence, the NRC issued him a Notice of Violation.[21] After determining that the unnamed co-conspirator (i.e., the x-ray equipment operator) allowed Mr. Everson to take possession of the handgun upon its detection, erased the photographic evidence of the handgun with Mr. Everson's assistance, and failed to properly report the incident, the NRC apparently took no action whatsoever against the unnamed co-conspirator. The NRC did determine that the unnamed co-conspirator turned down a cash bribe from Mr. Everson to remain silent about the episode. But both individuals jointly conspired to erase the photographic evidence. Both individuals failed to react properly to the discovery of the handgun. It is hard to fathom why Mr. Everson was singled out by the NRC for sanctions.

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[17] J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Mr. David J. Understahl, "Notice of Violation (NRC Office of Investigations Reports No. 3-1998-037 and 3-1998-037S)," September 20, 2000.
[18] J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Mr. Billy R. Watts, "Notice of Violation (NRC Office of Investigations Reports No. 3-1998-037 and 3-1998-037S)," September 20, 2000.
[19] Frank J. Miraglia, Jr., Deputy Executive Director for Regulatory Programs, to Mr. Randall G. Falvey, "Order Prohibiting Involvement in NRC-Licensed Activities (NRC Office of Investigations Report No. 3-1998-043)," October 19, 1999.
[20] J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Daniel Cosentino, "Notice of Violation (Byron Inspection Reports 50-454/99020(SRP); 50-455/99020(DRP))," July 19, 2000.
[21] J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Mr. Neil Everson, "Notice of Violation (NRC Office of Investigations Report No. 3-98-017)," July 20, 1999.

- Taylor / Unnamed Millstone Operator: Upon learning that Mr. Taylor tested positive for illegal drug use during a random fitness-for-duty check, the NRC issued this licensed operator a letter warning him not to do it again.[22] After learning that an unnamed licensed operator at Millstone Unit 3 tested positive for alcohol in a for-cause test, the NRC has taken no action to date.[23] Both cases involved licensed operators. Both cases involved licensed operators failing fitness-for-duty tests. Only one case involved an NRC sanction. Curious, very curious.

Disproportionate Punishments

The inconsistencies noted in the previous section are confusing and strongly suggest that the NRC is less than fair in how it doles out sanctions. But they do not represent the threats to public health and safety that are reflected by an apparent bias in how the NRC implements its Enforcement Policy. UCS identified many instances where the NRC imposed lower sanctions for violations with higher safety significance. In other words, the NRC's enforcement actions are exactly opposite of the underlying safety significance. Public health and safety is best served when the NRC places its highest attention and regard on the most significant safety threats. These instances also suggest that the NRC has not achieved its stated objective of responding in a manner that reflects the potential safety impacts of the violations. The instances indicating bias are summarized below:

- Bass / American Electric Power: After determining that Mr. Bass failed to follow procedures regarding approximately 500 components evaluated over a two year period using measuring and test equipment that was out of calibration, the NRC issued an order banning him from NRC-licensed activities for three years.[24] After determining that individuals at D C Cook deliberately and intentionally discontinued the monitoring of unavailability for 46 safety systems within the scope of the Maintenance Rule from 1997 through April 2000,[25] the NRC issued a GREEN finding and imposed no individual sanctions. Rather than debate the relative dangers of degraded versus discontinued surveillance, UCS points out that these violations are remarkably similar with comparable safety impacts. But the NRC treated these infractions very differently. It is impossible to understand why Mr. Bass got a three year ban for essentially the same violation that only earned AEP a GREEN finding and the irresponsible individuals got away without so much as a warning letter.

- VanCleave / Taylor: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. Upon learning that Mr. Taylor tested positive for illegal drug use during a random fitness-for-duty check, the NRC issued this licensed operator a letter warning him not to do it again.[26] Anyone who has watched an episode of *M.A.S.H.* can

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[22] Bruce S. Mallett, Director – Division of Reactor Safety, Nuclear Regulatory Commission, to Mr. Larry E. Taylor, "Notice of Violation," December 27, 1999.

[23] Nuclear Regulatory Commission, Daily Event Report No. 37312, "24 Hour Fitness for Duty Report," September 13, 2000.

[24] R. W. Borchardt, Director – Office of Enforcement, Nuclear Regulatory Commission, to Mr. Hiram J. Bass, "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) - NRC Office of Investigations Report No. 2-1999-028 and NRC Inspection Report Nos. 50-259/00-03, 50-260/00-03, and 50-296/00-03," October 27, 2000.

[25] Geoff Grant, Director - Division of Reactor Projects, Nuclear Regulatory Commission, to Mr. R. P. Powers, Senior Vice President - Nuclear Generation Group, American Electric Power Company, "D C Cook Nuclear Power Plant - NRC Inspection Report 50-315-00-20(DRP); 50-316-00-20(DRP)," October 25, 2000.

[26] Bruce S. Mallett, Director – Division of Reactor Safety, Nuclear Regulatory Commission, to Mr. Larry E. Taylor, "Notice of Violation," December 27, 1999.

understand that clerks perform important functions. But even the most ardent clerk fan must agree that a licensed operator performs, on average, more nuclear safety-related tasks than a clerk. That may very well be the reason that the NRC licenses operators and not clerks. Thus, it is impossible to fathom the NRC's actions in these two cases if one uses potential safety impacts as a gauge. It is equally difficult to comprehend the NRC's actions if one uses their alleged willfulness aspect. The NRC contended that Mrs. VanCleave deliberately falsified her employment application. But the NRC did not contend that Mr. Taylor accidentally used illegal drugs. Both violations were equally willful, but Mrs. VanCleave paid a much higher penalty.

- VanCleave / Miller: Ditto on the previous VanCleave / Taylor discussion except that Mr. Miller is substituted for Mr. Taylor. Mr. Miller was also notified by the NRC that his employer had arranged for his operator's license to expire.[27]

- VanCleave / Allison: Ditto on the previous VanCleave / Taylor discussion except that Mr. Allison, a licensed operator at the Vogtle nuclear plant, tested positive for alcohol.[28]

- VanCleave / Cosentino: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that Mr. Cosentino falsified records to indicate he had inspected 15 portable fire extinguishers and 13 fire hose stations over an 11-month period in 1999 when he had not done so, the NRC issued him a Notice of Violation.[29] The risk of reactor core damage resulting from an in-plant fire has been estimated to be up to 68 percent of the overall core damage risk at one US nuclear power plant. In other words, the fire risk at this plant is twice that from all other risks combined. Although the risk of core damage from the actions of a clerk who falsified an employment application has, thus far, not been quantified, it is reasonable to presume that it is somewhat less than the threat from plant fires. Paper cuts may occur more frequently than plant fires, but the consequences are significantly less. In other words, the potential safety impacts from Mr. Cosentino's violation are clearly and unequivocally greater than those from Mrs. VanCleave's violation. Because the NRC did not state or imply that Mr. Cosentino's failures to inspect and subsequent record falsifications were accidental, it is believed that both violations were equally willful. Thus, it is impossible to understand why Mrs. VanCleave received a three-year ban and Mr. Cosentino merely received a letter in his file.

- Reed / Cosentino: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As indicated previously, Mr. Cosentino failed to inspect fire safety equipment and falsified records showing that he had completed the inspections. As in the VanCleave/Cosentino comparison, the potential safety impacts from Mr. Cosentino's violation are clearly and unequivocally greater than those from Mr. Reed's violation. Because the NRC did not state or imply that Mr. Cosentino's failures to inspect and subsequent record falsifications were accidental, it is believed that both violations were equally willful. Thus, it

[27] Charles A. Castro, Director – Division of Reactor Safety, Nuclear Regulatory Commission, to Mr. Bryce E. Miller, "Notice of Violation and Expiration of License," August 15, 2000.
[28] Victor M. McCree, Deputy Director - Division of Reactor Safety, Nuclear Regulatory Commission, to Mr. Steven M. Allison, "Notice of Violation," March 25, 1999.
[29] J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Daniel Cosentino, "Notice of Violation (Byron Inspection Reports 50-454/99020(SRP); 50-455/99020(DRP))," July 19, 2000.

is impossible to understand why Mr. Reed received a one-year ban and Mr. Cosentino merely received a letter in his file.

- VanCleave / Unnamed Westinghouse Worker: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that an employee at the Westinghouse fuel processing plant in South Carolina had willfully violated procedures resulting in unacceptable quantities of enriched uranium being handled, the NRC issued a Notice of Violation to the company but took no action against the worker.[30] The September 1999 criticality accident at the fuel processing plant in Tokai-mura, Japan killed two workers. That accident was caused when workers failed to follow procedures resulting in unacceptable quantities of enriched uranium being handled.[31] The worker's willful violation at the Westinghouse fuel processing plant clearly and unequivocally had greater potential safety impact that Mrs. VanCleave's violation. Both were equally willful. Thus, it is impossible to understand why Mrs. VanCleave received a three-year ban and the Westinghouse worker did not even get a warning letter from the NRC.

- Reed / Unnamed Westinghouse Worker: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As detailed previously, a worker at Westinghouse's fuel processing plant in South Carolina willfully violated procedures intended to prevent nuclear criticality, but received no sanction whatsoever from the NRC. As in the VanCleave/Unnamed Westinghouse Worker comparison, the worker's willful violation at the Westinghouse fuel processing plant clearly and unequivocally had greater potential safety impact that Mr. Reed's violation. Both were equally willful. Thus, it is impossible to understand why Mr. Reed received a one-year ban and the Westinghouse worker did not even receive a warning letter from the NRC.

- VanCleave / Tipton: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that Mr. Tipton, a foreman at the Watts Bar nuclear plant, had tampered with a fitness-for-duty sample and tested positive for an illegal drug from a second, observed sample, the NRC mailed him a Notice of Violation.[32] Mrs. VanCleave was a clerk at D C Cook. Mr. Tipton was a foreman at Watts Bar. Both willfully violated requirements in order to obtain/retain these jobs. Mrs. VanCleave was banned for three years. Mr. Tipton got a warning letter in his file. It is impossible to comprehend the disproportionate sanctions.

- Reed / Tipton: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As previously detailed, Mr. Tipton received a warning letter from the NRC after the NRC determined he tampered with a fitness-for-duty sample and

[30] Douglas M. Collins, Director – Division of Nuclear Materials Safety, Nuclear Regulatory Commission, to Mr. J. B. Allen, Manager – Columbia Plant, Westinghouse Electric Company, "NRC Office of Investigations Report Nos. 2-1999-004 and 2-1999-038 and Notice of Violation," March 10, 2000.
[31] William D. Travers, Executive Director for Operations, Nuclear Regulatory Commission, to Commissioners, Nuclear Regulatory Commission, "Review Of The Tokai-Mura Criticality Accident And Lessons Learned," SECY-00-0085, April 12, 2000.
[32] Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. John D. Tipton, "Notice of Violation (NRC Office of Investigations Report No. 2-99-023)," November 23, 1999.

tested positive for an illegal drug from a second sample. Mr. Reed was an engineer at Salem, Point Beach, and D C Cook. Mr. Tipton was a foreman at Watts Bar. Both willfully violated requirements in order to obtain/retain these jobs. Mr. Reed was banned for a year. Mr. Tipton got a letter in his file. It is impossible to comprehend the disparity in sanctions.

- VanCleave / Stromberg: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that Mr. Stomberg, a GE supervisor assigned to the Browns Ferry nuclear plant, had deliberately adulterated a fitness-for-duty sample, observed sample, the NRC mailed him a Notice of Violation.[33] Mrs. VanCleave was a clerk at D C Cook. Mr. Stromberg was a supervisor at Browns Ferry. Both willfully violated requirements in order to obtain/retain these jobs. Mrs. VanCleave was banned for three years. Mr. Stromberg got a letter in his file. It is impossible to comprehend the disproportionate sanctions.

- Reed / Stromberg: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As previously detailed, Mr. Stromberg received a warning letter from the NRC after the NRC determined he tampered with a fitness-for-duty sample. Mr. Reed was an engineer at Salem, Point Beach, and D C Cook. Mr. Stromberg was a supervisor at Browns Ferry. Both willfully violated requirements in order to obtain/retain these jobs. Mr. Reed was banned for a year. Mr. Stromberg got a letter in his file. It is impossible to comprehend the disparity in sanctions.

- VanCleave / Godwin: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that Mr. Godwin, a TVA nuclear plant worker, had deliberately adulterated a fitness-for-duty sample, the NRC mailed him a Notice of Violation.[34] Mrs. VanCleave was a clerk at D C Cook. Mr. Godwin was a nuclear plant worker for TVA. Both willfully violated requirements in order to obtain/retain these jobs. Mrs. VanCleave was banned for three years. Mr. Godwin got a letter in his file. It is impossible to comprehend the disproportionate sanctions.

- Reed / Godwin: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As previously detailed, Mr. Godwin received a warning letter from the NRC after the NRC determined he tampered with a fitness-for-duty sample. Mr. Reed was an engineer at Salem, Point Beach, and D C Cook. Mr. Godwin was a nuclear plant worker for TVA. Both willfully violated requirements in order to obtain/retain these jobs. Mr. Reed was banned for a year. Mr. Godwin got a letter in his file. It is impossible to comprehend the disparity in sanctions.

- VanCleave / Templeton: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After determining that Mr. Templeton, a senior health physics technician at the Wolf Creek nuclear plant, had deliberately sent a worker into

[33] Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. Ross H. Stromberg, "Notice of Violation (NRC Office of Investigations Report No. 2-99-022)," November 23, 1999.
[34] Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. John R. Godwin, "Notice of Violation (NRC Office of Investigations Report No. 2-99-025)," December 22, 1999.

a radioactive area knowing that the worker did not have the prescribed radiation protection clothing and intentionally failed to survey a potentially contaminated area before assigned two workers to tasks in the area, the NRC mailed him a Notice of Violation.[35] Mrs. VanCleave willfully provided inaccurate information in order to obtain a clerking job at D C Cook, at a time when both reactors were in cold shut down. Mr. Templeton willfully sent co-workers into harm's way with inadequate protection. Mrs. VanCleave was banned for three years. Mr. Templeton received a warning letter. It is impossible to discern why the sanctions are exactly opposite of the actual and potential safety impacts for two willful violations.

- Reed / Templeton: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As detailed previously, Mr. Templeton deliberately sent co-workers into radiation areas without prescribed protective clothing and surveys. Mr. Reed willfully concealed information in order to obtain engineering positions at the Salem, Point Beach, and D C Cook nuclear plants. Mr. Templeton willfully sent co-workers into harm's way with inadequate protection. Mr. Reed was banned for a year. Mr. Templeton received a warning letter. It is impossible to discern why the sanctions are exactly opposite of the actual and potential safety impacts for two willful violations.

- VanCleave / Non-Fab Four: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After learning that a contract supervisor at the Quad Cities nuclear plant tested positive for alcohol during a for-cause test, the NRC took no action whatsoever against the individual.[36] After learning that a contract supervisor (believed to be different from the Quad Cities contract supervisor, but unable to verify since names were not released) at the Vogtle nuclear plant tested positive during a random fitness-for-duty screening, the NRC took no action whatsoever against the individual.[37] After learning that a contract supervisor (once again believed to be different from the Quad Cities and Vogtle contractor supervisors, but unable to verify since names were not released) at the Grand Gulf Nuclear Station tested positive for alcohol during a random fitness-for-duty screening, the NRC took no action whatsoever against the individual.[38] After learning that a company supervisor tested positive for alcohol during a random fitness-for-duty screening, the NRC took no action whatsoever against the individual.[39] Mrs. VanCleave worked as a clerk. The non-fab four worked as supervisors, generally perceived to higher in the corporate hierarchy than clerks. Mrs. VanCleave's offense was concealing a past misdemeanor conviction that had little bearing on the performance of her clerical duties. The non-fab four's offenses could have directly impaired their performance on the job. Mrs. VanCleave violated a requirement that very few workers know about. The non-fab four violated a requirement that every single nuclear plant worker receives specific training on and must pass a written test about before getting an access badge. It is unbelievable that the NRC would ban Mrs. VanCleave from

[35] Ellis W. Merschoff, Regional Administrator, Nuclear Regulatory Commission, to Mr. Steve Templeton, "Notice of Violation (NRC Investigation Report No. A4-1999-020)," January 31, 2000.
[36] Nuclear Regulatory Commission, Daily Event Report No. 37433, "24-Hour Fitness-For-Duty Report Involving a Contract Supervisor," October 17, 2000.
[37] Nuclear Regulatory Commission, Daily Event Report No. 37311, "Contractor Tested Positive During Random Test for Drugs and Alcohol," September 12, 2000.
[38] Nuclear Regulatory Commission, Daily Event Report No. 37231, August 16, 2000.
[39] Nuclear Regulatory Commission, Daily Event Report No. 37007, "24 Hour Fitness for Duty Event," May 16, 2000.

NRC-licensed activities for three years yet take no action whatsoever against the non-fab four.

- Reed / Non-Fab Four: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As previously detailed, the non-fab four failed fitness-for-duty tests for drugs and alcohol, but received no sanctions of any sort from the NRC. Mr. Reed's offense was concealing information on past offenses that had marginal bearing on the performance of his engineering duties. The non-fab four's offenses could have directly impaired their performance on the job. Mr. Reed violated a requirement that very few workers know about. The non-fab four violated a requirement that every single nuclear plant worker receives specific training on and must pass a written test about before getting an access badge. It is unbelievable that the NRC would ban Mr. Reed from NRC-licensed activities for a year yet take no action whatsoever against the non-fab four.

- VanCleave / Pseudo-Bomber: As detailed previously, Mrs. VanCleave was banned from NRC-licensed activities for three years because she falsified her employment application to get a job as a clerk at the D C Cook nuclear plant. After learning that a contractor at the Diablo Canyon nuclear plant made and planted a device at the facility that so closely resembled a bomb that the San Luis County Sheriff's Office was called in to de-fuse it, the NRC to date has taken no action whatsoever against the individual.[40] Mrs. VanCleave's offense was concealing a past misdemeanor conviction that had little bearing on the performance of her clerical duties. The pseudo-bomber's offense was committed inside the security fence of a nuclear power plant. It is impossible to reconcile how the NRC can view Mrs. VanCleave to be such a threat to public health and safety that it essentially banned her from the industry for three years, but can tolerate the pseudo-bomber without so much as a warning letter.

- Reed / Pseudo-Bomber: As detailed previously, Mr. Reed was banned from NRC-licensed activities for a year because he concealed information when applying for access at the Salem, Point Beach, and D C Cook nuclear plants. As previously detailed, the pseudo-bomber constructed a bomb-like device and planted it inside the security fence at the Diablo Canyon nuclear plant, but received zero sanctions to date from the NRC. Mrs. Reed's offense was concealing past criminal history that had marginal bearing on the performance of his engineering duties. The pseudo-bomber's offense was committed inside the security fence of a nuclear power plant. It is impossible to reconcile how the NRC can view Mr. Reed to be such a threat to public health and safety that it essentially banned him from the industry for a year, but can tolerate the pseudo-bomber without so much as a warning letter.

Dislikable Punishments

The bias is even more pronounced when one compares the enforcement actions for non-discrimination violations with the enforcement actions involving discrimination violations. Section 50.7 of Title 10 is supposed to protect nuclear plant workers from retaliation when they raise safety concerns. The NRC's Enforcement Policy claimed:

> The NRC places a high value on nuclear industry employees being free to raise potential safety concerns, regardless of the merits of the concern, to both licensee management and the NRC.

[40] David H. Oatley, Vice President - Diablo Canyon, Pacific Gas and Electric Company, to U.S. Nuclear Regulatory Commission, "Physical Security Event Report 1-2000-S01-00 / Fake Bomb in the Protected Area due to Unprofessional Behavior," December 5, 2000.

> Therefore, one of the goals of the NRC's Enforcement Policy is to ensure, through appropriate enforcement action against a licensee or licensee contractor (and when warranted, against the individual personally responsible for the act of discrimination), that employment actions taken against licensee or contractor employees for raising safety concerns do not have a chilling effect on the individual or others on the reporting of safety concerns.[41]

The NRC can, and has, found that nuclear plant owners are guilty of 10 CFR 50.7 violations without any individual at the plant being guilty of 10 CFR 50.5 violations. As UCS understands the NRC argument, all that is required for any plant owner to be guilty of a 10 CFR 50.7 employee protection violation is for the agency to substantiate that a worker was discriminated against due in part to participation in a protected activity. In order for an individual to be guilty of a 10 CFR 50.5 deliberate misconduct violation related to an employee protection violation finding, the agency must determine that the individual knew that his or her actions were discriminatory against the worker. So, UCS only looked at cases where the NRC found individuals guilty of deliberate misconduct for having discriminated against workers engaged in protected activities. UCS did not review cases where the NRC determined that workers had been 'accidentally' or 'inadvertently' discriminated against.

In every single 10 CFR 50.5 violation involving discrimination over the past two years, the NRC has failed to impose any enforcement action stronger than issuing a Notice of Violation to the responsible individuals. Cases involving discrimination violations—in just the past two years—are summarized below:

- McArthur & McGrath: The NRC determined that Mr. McArthur and Mr. McGrath engaged in deliberate misconduct by discriminating against Mr. Fiser for his having raised safety concerns. Specifically, the NRC determined that Mr. McArthur and Mr. McGrath took actions to cause or permit the non-selection of Mr. Fiser to either of two corporate Chemistry Program Manager positions in 1996.[42] The NRC issued both men a Notice of Violation. The NRC imposed a $110,000 civil penalty on their employer, the Tennessee Valley Authority, for the violation.[43] This is not the first time that TVA received a civil penalty from NRC for a discrimination violation involving a Chemistry Manager. Just three years earlier, the NRC imposed a $100,000 civil penalty on TVA for discrimination against Mr. William Jocher, a Chemistry Manager.[44] In the Jocher case, the NRC banned the TVA manager from NRC-licensed activities for five years.[45] In the Fiser case, the NRC did not ban the TVA managers and issued warning letters instead.

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[41] Nuclear Regulatory Commission, "NRC Enforcement Manual," NUREG/BR-0195 Rev. 3.
[42] Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. Wilson C. McArthur, "Notice of Violation (Nuclear Regulatory Commission Office of Investigations Report No. 2-98-013)," February 7, 2000, and Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. Thomas J. McGrath "Notice of Violation (Nuclear Regulatory Commission Office of Investigations Report No. 2-98-013)," February 7, 2000.
[43] Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. J. A. Scalice, Chief Nuclear Officer and Executive Vice President, Tennessee Valley Authority, "Notice Of Violation And Proposed Imposition Of Civil Penalty - $110,000 (Nuclear Regulatory Commission's Office of Investigations Report No. 2-98-013)," February 7, 2000.
[44] Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. Oliver D. Kingsley, Jr., President, TVA Nuclear and Chief Nuclear Officer, Tennessee Valley Authority, "Notice Of Violation And Proposed Imposition Of Civil Penalty - $100,000 (NRC Office of Investigation Report No. 2-93-015 and Department of Labor Administrative Law Judge Recommended Decision and Order, dated July 31, 1996)," January 13, 1997.
[45] NRC News Release 97-08, January 14, 1997, available at http://www.nrc.gov/OPA/gmo/nrarcv/nr97/97-08ii.htm.

- Labarraque: The NRC determined that Mr. Labarraque engaged in deliberate misconduct by transferring the Manager of Quality Systems from a managerial position to a non-managerial position because that individual raised safety concerns. The NRC issued Mr. Labarraque a Notice of Violation.[46]

- Landrum: The NRC determined that Mr. Landrum, a Shift Operations Supervisor at the Zion nuclear plant, engaged in deliberate misconduct by deferring a licensed Senior Reactor Operator' participation in a qualification process for shift manager because that individual raised safety concerns. The NRC issued Mr. Landrum a Notice of Violation.[47]

- Tewksbury: The NRC determined that Mr. Tewksbury engaged in deliberate misconduct by discriminating against a quality verification inspector at the Clinton nuclear plant for contacting the NRC about a safety concern. The NRC issued Mr. Tewksbury a Notice of Violation.[48]

- Pageau: The NRC determined that Mr. Pageau, a foreman at the Seabrook nuclear plant, engaged in deliberate misconduct by selecting an electrician for a layoff a few days after that individual raised a safety concern. The NRC issued Mr. Pageau a Notice of Violation.[49] The NRC imposed a $55,000 fine on Mr. Pageau's employer for the violation.[50]

- DeBarba: The NRC determined that Mr. DeBarba, then Vice President for Nuclear Engineering Services for Northeast Utilities, engaged in deliberate misconduct by demoting two supervisors who had raised safety concerns. The NRC issued Mr. DeBarba a Letter of Reprimand.[51] The NRC also issued Mr. DeBarba's employer a Notice of Violation for this, and other, discrimination violations.

- AEP Nuclear Engineering Structural Design Manager: The NRC determined that the Nuclear Engineering Structural Design Manager at D C Cook discriminated against a contract engineer by firing the individual for testifying in an NRC licensing hearing for the Comanche Peak Nuclear Power Plant prior to his employment at AEP. Based in part on this protected activity, AEP terminated the engineer's employment at AEP after seven days of a six-month assignment. The NRC issued the Nuclear Engineering Structural Design Manager's employer a Notice of Violation, but imposed zero sanctions against the individual.[52]

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[46] J. E. Dyer, Regional Administrator, to Mr. Jorge A. Labarraque, "Notice of Violation (NRC Office of Investigations Report No. 3-1998-033)," December 20, 1999.
[47] J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Mr. Raymond E. Landrum, "Notice of Violation (NRC Office of Investigations Report No. 3-1998-012)," November 3, 1999.
[48] J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Mr. Charles H. Tewksbury, "Notice of Violation (NRC Office of Investigations Report No. 3-97-040)," September 30, 1999.
[49] Hubert J. Miller, Regional Administrator, Nuclear Regulatory Commission, to Mr. Gary Pageau, "Notice of Violation (NRC OI Investigation I-1998-005)," August 3, 1999.
[50] Hubert J. Miller, Regional Administrator, Nuclear Regulatory Commission, to Mr. T. C. Feigenbaum, Executive Vice President and Chief Nuclear Officer, Seabrook Station, North Atlantic Energy Service Corporation, "Notice of Violation And Proposed Imposition Of Civil Penalty - $55,000 (Office Of Investigations Report 1-98-005)," August 3, 1999.
[51] Hubert J. Miller, Regional Administrator, Nuclear Regulatory Commission, to Mr. Eric DeBarba, "Notice of Violation (NRC Office of Investigations (OI) Case No. 1-96-002)," April 6, 1999.
[52] J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to R. P. Powers, Senior Vice President - Nuclear Generation Group, American Electric Power Company, "Notice Of Violation (NRC Office Of Investigations Report No. 3-1998-041)," May 5, 2000.

Thus, the eight occasions over the past two years where the NRC determined that supervisors and managers engaged in deliberate misconduct by discriminating against nuclear plant workers raising safety concerns resulted in six Notices of Violation, one Letter of Reprimand, and one complete pass.

On the other hand, the five occasions over the past two years where the NRC determined that non-supervisory and non-managerial persons willfully submitted inaccurate information in order to get a job at a nuclear plant resulted in two orders banning the individuals from NRC-licensed activities for at least a year, one Notice of Violation, and two complete passes.

It is abundantly clear that the NRC is treading lightly when it comes to imposing sanctions against nuclear power plant managers for violations as bad as, if not worse, than violations committed by lower level workers.

Enforcement Policy Flaw

The sole policy issue that UCS identified during our review involves licensed operators who violate fitness-for-duty requirements. The NRC instituted its fitness-for-duty rule in the 1980s to assure that nuclear plant workers are not impaired by drugs or alcohol.[53] The NRC's Enforcement Policy states:

> In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements ... normally only a Notice of Violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors of performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels.

By itself, this policy appears reasonable. It provides a sanction for the first detected violation followed by a more severe sanction for the second detected violation.

In practice, this policy appears untenable. While all nuclear workers perform important tasks, licensed operators carry a unique burden. Other plant workers perform their tasks in less time-critical domains that permit independent verifications of safety-related functions. But licensed operators must be ready to respond immediately to transients and accidents with minimal opportunities for cross-checking by other operators. The importance of licensed operators performing these vital activities unimpaired by drug and alcohol use cannot be understated.

It is therefore difficult to reconcile the apparent disconnect between this policy for licensed operators and sanctions imposed on non-licensed workers for lesser deeds. For example, the NRC recently imposed a three-year ban on a female clerk because she provided inaccurate information on her employment application and a one-year ban on a male engineer because he concealed prior criminal history. But when four licensed operators were discovered by NRC to have violated the fitness-for-duty requirements, the agency merely sent them warning letters. The violations by the licensed operators have far greater risk significance than the violations by either the clerk or the engineer. Yet the NRC's sanctions were inversely proportional to that risk significance.

The enforcement case history demonstrates that the nuclear industry also applies a double standard to licensed operators. Two of the 23 enforcement cases involved licensed operators who used illegal drugs. It is not apparent either licensed operator lost his job, although in one case the individual's license was surrendered by his employer. Three of the 23 cases involved non-licensed workers who used illegal drugs. All three individuals were fired. Two of the 23 cases involved non-licensed workers who violated the fitness-for-duty requirements by detecting alcohol on the breath of a co-worker but assisting the co-

[53] 10 CFR Part 26, "Fitness for Duty Programs," available at http://www.nrc.gov/NRC/CFR/PART026/index.html.

worker in evading a for-cause test. Both of these individuals was fired or allowed to resign. Thus, the record showed that licensed operators retained their jobs following violations of the fitness-for-duty requirements when non-licensed workers did not.

The disparity probably has more to do with economics than safety. Plant owners invest considerable financial resources training individuals to be licensed operators. Therefore, plant owners suffer greater economic disadvantage when the NRC bans a licensed operator than when the NRC bans a clerk or an engineer.

The NRC should review its enforcement policy, and how it is implemented, to ensure that sanctions taken against both licensed and non-licensed nuclear plant workers are fair, consistent, and risk-informed.

Conclusions

A review of enforcement actions taken against individuals over the past two years indicates that—as a minimum—the NRC staff is not clearly articulating the bases for its enforcement decisions. UCS concludes that the problem goes deeper than inadequate communication. UCS believes the data show:

1. Dissimilar sanctions for comparable violations,
2. Disproportionate sanctions, and
3. Dislikable sanctions.

The cases show that some individuals were banned from NRC-licensed activities for the very same offenses that other individuals merely received warning letters from the NRC. UCS concedes that there may be bona fide reasons for an occasional difference in sanctions for similar offenses. But the sheer volume of these dissimilar sanctions makes it highly improbable that all the differences are for legitimate reasons.

The cases show that some individuals were banned from NRC-licensed activities for offenses with significantly lower risk than from offenses by other individuals who merely received warning letters—and sometimes no sanctions whatsoever—from NRC. The sheer volume of these disproportionate sanctions makes it highly improbable that the NRC is implementing a risk-informed enforcement policy.

The cases show that managers and supervisors can engage in deliberate misconduct by discriminating against workers raising safety concerns without fear of any harsher sanction from the NRC than a warning letter. The sheer volume of these dislikable sanctions makes it highly improbable that the NRC enforcement program, as implemented, will assure that all nuclear power plants have safety conscious work environments.

Quite simply, the enforcement actions taken by the NRC against managers and supervisors who discriminate against workers raising safety issues is NOT achieving the agency's stated goal:

> [O]ne of the goals of the NRC's Enforcement Policy is to ensure, through appropriate enforcement action against a licensee or licensee contractor (and when warranted, against the individual personally responsible for the act of discrimination), that employment actions taken against licensee or contractor employees for raising safety concerns do not have a chilling effect on the individual or others on the reporting of safety concerns.[54]

[54] Nuclear Regulatory Commission, "NRC Enforcement Manual," NUREG/BR-0195 Rev. 3.

Further evidence supporting this conclusion comes from the NRC's Office of Investigations (OI). Table 3 provides data on OI cases:[55]

Table 3	FY 1998	FY 1999	FY 2000
Cases opened to investigate false statements	47	38	41
Cases opened to investigate discrimination	80	88	98

The number of discrimination cases nearly doubles the number of false statement cases. The number of discrimination cases is increasing approximately 10 percent annually while the number of false statement cases is at least level if not decreasing. It seems plausible that false statement cases are decreasing because the NRC imposes harsh sanctions, including bans, for violations, It also seems plausible that discrimination cases are increasing because the NRC imposes relatively light sanctions against those guilty of the discriminating.

It is certainly true today that a conscientious nuclear plant worker who follows his or her moral and legal obligations by raising a safety concern faces far greater career risk than a nuclear plant manager who violates federal regulations by engaging in deliberate misconduct in discriminating against that worker. The NRC must stop aiding and abetting illegal activities by nuclear plant managers.

The former Director of the Office of Enforcement at the NRC stated during the Regulatory Information Conference in March 2001 that the Notices of Violation mailed out to plant managers must be effective sanctions because no plant manager has ever been a repeat letter-getter. Perhaps, but that fact could be explained by the 'chilling effect' from these managers being perceived by workers as getting away with discriminating against co-workers. What worker in his or her right mind would raise a safety concern to a plant manager with demonstrated immunity from meaningful NRC sanctions? O. J. Simpson's next wife seems more likely to complain about domestic violence.

In any event, it is abundantly clear that the agency is not "Responding to violations of regulations in a predictable and consistent manner that reflects the potential safety impact of the violations."[56]

Recommendations
The NRC staff created a Discrimination Task Force and conducted a series of public meetings last year. Based on the information gathered during that effort, the NRC staff should draft revisions to its Enforcement Manual to ensure that enforcement actions are fair, consistent, and risk-informed.

The NRC staff should issue the draft Enforcement Manual revision for public comment and conduct at least one public workshop to collect feedback from external stakeholders.

The NRC staff should issue the revised Enforcement Manual and institute monitoring programs intended to ensure that fair, consistent, and risk-informed enforcement actions are achieved.

The NRC staff should revise its enforcement policy on enforcement actions for licensed operators violating the fitness-for-duty rule to ensure that they are fair, consistent, and risk-informed relative to enforcement actions for non-licensed plant workers.

[55] Nuclear Regulatory Commission, Office of Investigations, "FY 2000 Annual Report," January 2001.
[56] Nuclear Regulatory Commission, "Reactor Oversight Process," NUREG-1649 Rev. 3, July 2000.

Attachment 1
Three Year Bans

1. **Frank J. Miraglia, Jr., Deputy Executive Director for Reactor Programs, Nuclear Regulatory Commission, to Mrs. Gail C. VanCleave, "Order Prohibiting Involvement in NRC-Licensed Activities (NRC Office of Investigations Report No. 3-1999-048)," November 6, 2000**

   "The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Order) is being issued to you based on an investigation by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI). The Code of Federal Regulations (CFR), specifically 10 CFR 73.56(a), requires NRC licensees to establish and maintain programs, including background investigations to identify past actions which are indicative of an individual's future reliability, to ensure that individuals granted unescorted access to NRC-licensed facilities are trustworthy and reliable and do not constitute an unreasonable risk to public health and safety. Based on the OI investigation, we conclude that you deliberately provided a false social security number in an attempt to conceal the fact that you had twice previously been denied unescorted access at NRC licensees because of a misdemeanor conviction for theft from a Department of Energy contractor. As a result of that materially incomplete and inaccurate information, you gained unescorted access to the D. C. Cook Plant from September 17, 1999, to November 18, 1999. Additionally, you made a statement to an NRC investigator that you would repeat the deliberate acts of falsification again [sic] should you find yourself in a similar financial situation. Such a statement provides us no assurance that should you be employed in the nuclear industry, you could be trusted to comply with NRC requirements."

   "Accordingly, the enclosed Order prohibits your involvement in NRC-licensed activities for a period of three years."

   "By letter dated May 18, 2000, the NRC offered you the opportunity to discuss the NRC findings at a predecisional conference (PEC) or to submit a written explanation by August 21, 1999. ... Our letter was sent to you by Certified Mail, return receipt requested, and the U.S. Postal Service returned the letter to us on July 21, 2000, marked as unclaimed. The letter was resent to you on July 21, 2000, by express delivery and was delivered to your address on July 25, 2000. On August 8, 200, you contacted the NRC Region III office and acknowledged receiving the letter from the NRC. At that time you declined the opportunity to meet with the NRC staff in a predecisional enforcement conference and indicated that you would be writing a letter of explanation to the NRC. The NRC has not received any correspondence or further communication from you as of this date."

   "Based on the above, it appears that Gail VanCleave, an employee of a Licensee contractor, engaged in deliberate misconduct in violation of 10 CFR 50.5 by deliberately providing materially incomplete and inaccurate information to the Licensee. The NRC must be able to rely on the Licensee, its employees and the employees of its contractors to comply with NRC requirements, including the requirement to provide complete and accurate information and maintain records that are complete and accurate in all material respects. ... Therefore, the public health, safety and interest require that Gail C. VanCleave be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order."

2. **R. W. Borchardt, Director – Office of Enforcement, Nuclear Regulatory Commission, to Mr. Hiram J. Bass, "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) - NRC Office of Investigations Report No. 2-1999-028 and NRC Inspection Report Nos. 50-259/00-03, 50-260/00-03, and 50-296/00-03," October 27, 2000**

   "The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately), (Order), is being issued because of your deliberate misconduct in violation of 10 CFR 50.5 of the Commission's regulations, as described in the Order. ... The NRC's Office of Investigations

investigation report summary and NRC Inspection Report 50-259/00-03, 50-260/00-03, 50-296/00-03 were sent to you by letter dated July 31, 2000. In that letter, you were provided an opportunity to respond to the apparent violation and/or request a predecisional enforcement conference. The NRC attempted to contact you by telephone on numerous occasions; however, to date you have not responded to our July 31, 2000 letter."

"The Order prohibits your involvement in NRC-licensed activities for a period of three years from the date of your resignation from TVA, June 21, 1999."

"In June 1999, a BFN [Browns Ferry Nuclear] self-assessment of the M&TE [measuring and test equipment] program revealed that several out-of-tolerance M&TE items did not have nonconformance evaluations initiated by BFN. Further TVA review determined that, from June 1997 to June 1999, approximately 500 nonconformance evaluations were not properly issued and/or dispositioned for components tested or inspected using out-of-tolerance M&TE. ... On June 21, 1999, following questions by TVA regarding this matter, Mr. Bass resigned from TVA."

"The NRC's investigation and inspection of this matter concluded that Mr. Bass deliberately failed to issue and/or disposition nonconformance evaluations on test equipment that was out-of-tolerance, in accordance with BFN Technical Specification required Licensee procedures."

3. **Frank J. Miraglia, Jr., Deputy Executive Director for Regulatory Programs, to Mr. Randall G. Falvey, "Order Prohibiting Involvement in NRC-Licensed Activities (NRC Office of Investigations Report No. 3-1998-043)," October 19, 1999.**

"The NRC-approved security manual for the Wisconsin Public Service Corporation's (WPSC) Kewaunee Nuclear Power Plant requires that all on-site firearms, including shotguns, be test fired annually. The OI investigation determined that you were responsible for ensuring weapons used by the security force at the Kewaunee Nuclear Power Plant were test fired annually and you failed to ensure that 11 shotguns during 1997 and nine shotguns in 1998 were test fired. ... The OI investigation also found that you deliberately falsified the records for those tests and you provided false information to the plant security director during the WPSC investigation of this matter."

"The enclosed Order prohibits your involvement in NRC-licensed activities for a period of three years."

"By letter dated July 22, 1999, the NRC offered you the opportunity to discuss the NRC findings at a predecisional enforcement conference (PEC) or to submit a written explanation by August 21, 1999. ... As of the date of this letter, you had not replied to the NRC's July 22, 1999 letter."

Attachment 2
One Year Bans

1. **Frank J. Miraglia, Jr., Deputy Executive Director for Reactor Programs, Nuclear Regulatory Commission, to Mr. Garner W. Reed, "Order Prohibiting Involvement in NRC-Licensed Activities (NRC Office of Investigations Report No. 3-1999-028)," December 4, 2000.**

"The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Order) is being issued to you based on an investigation by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI). The Code of Federal Regulations (CFR), specifically 10 CFR 73.56(a), requires NRC licensees to establish and maintain programs, including background investigations, to identify past actions which are indicative of an individual's future reliability, to ensure that individuals granted unescorted access to NRC-licensed facilities are trustworthy and reliable and do not constitute an unreasonable risk to public health and safety. The OI investigation determined that you deliberately failed to divulge your complete criminal arrest history when applying for access to the Salem, Point Beach, and Donald C. Cook Nuclear Power Plants. Furthermore, you deliberately failed to notify plant officials that you were arrested for operating a motor vehicle while you were under the influence of alcohol during your periods of employment at the Salem and Point Beach facilities. Also, you provided incomplete and/or inaccurate information about an arrest for possession of marijuana and a stolen motorcycle during the interview with the OI investigator."

"The enclosed Order prohibits your involvement in NRC-licensed activities for a period of one year."

"Information obtained during the OI investigation indicated that Mr. Reed was arrested and subsequently convicted of:

"Possession of marijuana, receiving and concealing stolen property in Mobile, AL, on or about June 22, 1976,

"Driving under the influence of alcohol in Louisiana on May 13, 1993,

"Operating while intoxicated (OWI) in Huntsville, AL, during November 1993,

"OWI in Hamilton County, TN, on November 16, 1994,

"OWI in Hamilton County, Chattanooga, TN, on October 17, 1995, alternatively reported as Ringgold, GA,

"OWI in Woodstown, NJ on October 5, 1997,

"OWI in New Jersey on January 11, 1998, and

"OWI in Two Rivers, WI, on April 10, 1999."

"During his sworn, transcribed interview with the OI investigator on November 4, 1999, Mr. Reed admitted that he knew he was required to report his arrests to the Licensees, but stated that he was afraid he would lose his job in the nuclear industry if the Licensees learned of all of his OWI arrests."

"Furthermore, 10 CFR 50.5(a)(2) provides that an employee of a licensee or an employee of a contractor of any licensee may not deliberately submit to the NRC or a licensee or a licensee's contractor information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. An individual's criminal history is material to the NRC because it is part of the information a licensee evaluates to provide high assurance that

individuals granted unescorted access to NRC licensed facilities are trustworthy and reliable, and do not constitute an unreasonable risk to the health and safety of the public including a potential to commit radiological sabotage (10 CFR 73.56(b))."

"Furthermore, Mr. Reed provided inaccurate information to the OI investigator during a sworn, transcribed interview on November 4, 1999. Mr. Reed stated that his arrest on June 22, 1976, was for possession of stolen property, the charges against him were dropped and he was subsequently cleared of the charges."

Attachment 3
Warning Letters

1. **Charles A. Castro, Director – Division of Reactor Safety, Nuclear Regulatory Commission, to Mr. Bryce E. Miller, "Notice of Violation and Expiration of License," August 15, 2000.**

   "The Nuclear Regulatory Commission (NRC) has received a letter dated July 14, 2000, from Carolina Power & Light Company's (CP&L) Harris Nuclear Plant, informing us that they no longer have a need to maintain your facility license. We also received a letter dated July 31, 2000, from the Harris Nuclear Plant informing us of your admission regarding the use of cocaine on three separate instances. ... In accordance with 10 CFR 55.55(a), the determination by the facility licensee that you no longer need to maintain a license caused your license (license number SOP-20366-3) to expire as of July 14, 2000."

2. **J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Daniel Cosentino, "Notice of Violation (Byron Inspection Reports 50-454/99020(SRP); 50-455/99020(DRP)),," July 19, 2000.**

   "The violation is cited in the enclosed Notice of Violation (Notice). In summary, while you were employed as a maintenance mechanic at ComEd's Byron Nuclear Station, you deliberately failed to perform visual inspections of 15 portable fire extinguishers and 13 fire hose stations between January and November 1999, and falsified the associated visual inspection data sheets."

   "The NRC considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, after consultation with the Director, Office of Enforcement, and after considering the circumstances of his case, including the facts that: (1) the actual safety significance was minimal, since ComEd subsequently checked the extinguishers and fire hose stations and found no problems; (2) you indicated during the conference that you understand the significance of your actions and would follow procedures and perform tasks as expected in the future; and (3) ComEd took action regarding your wrongdoing, including removing your access to the Byron Generating Station, I have decided to issue the enclosed Notice of Violation."

3. **John A. Grobe, Director – Division of Reactor Safety, Nuclear Regulatory Commission, to Mr. Oliver D. Kingsley, President – Nuclear Generation Group, Commonwealth Edison Company, "Notice of Violation (Office of Investigations Report No. 3-1999-026)," April 20, 2000.**

   "Based on the information developed during the OI investigation, the NRC has determined that a willful violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice). In summary, an employee entered the protected area of the Braidwood Station on July 20, 1999, to visit the station nurse following an absence due to a family emergency. The employee was not scheduled to work at that time. While visiting the nurse, the nurse detected the odor of alcohol on the individual and the nurse failed to direct the individual to FFD for cause testing as required by ComEd procedure. ... [ComEd's corrective actions included] permitting the nurse to resign in lieu of termination."

4. **Douglas M. Collins, Director – Division of Nuclear Materials Safety, Nuclear Regulatory Commission, to Mr. J. B. Allen, Manager – Columbia Plant, Westinghouse Electric Company, "NRC Office of Investigations Report Nos. 2-1999-004 and 2-1999-038 and Notice of Violation," March 10, 2000.**

   "Based on the results of the OI investigations, the NRC has determined that a violation of NRC requirements occurred. The violation cited in the enclosed Notice of Violation (Notice) involves the failure of a worker to follow operating procedures that impacted a safety control. The violation is of

concern because it was determined to be a willful violation and indicates weaknesses in the communication of safety controls to your workers through training and procedures. ...The actions [taken by the company] included suspension of the offending employee without pay and retraining of the employee on all applicable procedures."

"Approved licensee procedures COP-814700 and COP-814755 requires specific methods for transferring uranium to ensure that only authorized containers that have been analyzed to have acceptable moisture content are present in the bulk blending room."

"Contrary to the above, on January 20, 1999, an employee violated the requirements of the approved licensee procedures. Specifically, containers of uranium oxide powder were taken into the bulk blending room without proper authorization."

5. **Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. Wilson C. McArthur, "Notice of Violation (Nuclear Regulatory Commission Office of Investigations Report No. 2-98-013)," February 7, 2000.**

"After a review of the information obtained during the predecisional enforcement conference and the information developed during the OI investigation, the NRC has determined that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. ... In summary, the violation involved actions taken by you to cause or permit the non-selection of Mr. Fiser to one of two corporate Chemistry Program Manager positions in 1996. The NRC concluded that you assisted in implementing a selection process that ensured Mr. Fiser was not selected, in part, because of his prior protected activities. These protected activities included Mr. Fiser's identification of chemistry related nuclear safety concerns in 1991-1993, and his subsequent filing of a Department of Labor (DOL) complaint in September 1993, that was based, at least in part, in these chemistry related nuclear safety concerns."

"In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of your past involvement in licensed activities in a support function only, and the significant sanction being taken against TVA."

6. **Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. Thomas J. McGrath "Notice of Violation (Nuclear Regulatory Commission Office of Investigations Report No. 2-98-013)," February 7, 2000.**

"After a review of the information obtained during the predecisional enforcement conference and the information developed during the OI investigation, the NRC has determined that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. ... In summary, the violation involved actions, or lack of actions, taken by you to cause the non-selection of Mr. Fiser to a corporate Chemistry Program Manager position in 1996. The NRC concluded that you assisted in implementing a reorganization and selection process to ensure that Mr. Fiser was not selected, in part, because of his prior protected activities. These protected activities included Mr. Fiser's identification of chemistry related nuclear safety concerns in 1991-1993, and his subsequent filing of a Department of Labor (DOL) complaint in September 1993, that was based, at least in part, in these chemistry related nuclear safety concerns."

"In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the

enclosed Notice in this case because of your past involvement in licensed activities in a support function only, and the significant sanction being taken against TVA."

7. **Ellis W. Merschoff, Regional Administrator, Nuclear Regulatory Commission, to Mr. Steve Templeton, "Notice of Violation (NRC Investigation Report No. A4-1999-020)," January 31, 2000.**

   "The NRC's Office of Investigations (OI) conducted an investigation on this issue [HP support during steam generator nozzle dam installation at Wolf Creek on April 16, 1999] and found that you engaged in deliberate misconduct in two instances: (1) by instructing a decontamination technician to enter an area when you knew he did not have the personal protective equipment required by the radiation work permit (RWP); and (2) by intentionally failing to survey the steam generator platform prior to sending two decontamination technicians to decontaminate the platform (roll up the herculite)."

   "Although there were no actual safety consequences of the underlying violations, the NRC considers your acts of deliberate misconduct to be a serious breach of the trust and integrity expected of a senior health physics technician, whose responsibility is to ensure that the workers follow prescribed radiation protection practices. After reviewing all the circumstances of this case, including the disciplinary action already taken against you by your employer, your level within the organization, and the fact there were no actual safety consequences to your actions, the NRC has limited its enforcement action to issuance of the enclosed Notice of Violation to you."

8. **Bruce S. Mallett, Director – Division of Reactor Safety, Nuclear Regulatory Commission, to Mr. Larry E. Taylor, "Notice of Violation," December 27, 1999.**

   "The Nuclear Regulatory Commission (NRC) has received a letter dated December 1, 1999, from the Duke Energy Corporation (Duke Energy), informing us of your confirmed positive test for tetrahydrocannabinol (THC). ... This confirmed positive test for drugs represents a violation of the NRC's requirements in 10 CFR 55.53(j). ... The use of illegal drugs is a serious matter that could adversely affect an operator's ability to safety and competently performed licensed duties, and undermines the special trust and confidence placed in you as a licensed nuclear reactor plant operator."

9. **Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. John R. Godwin, "Notice of Violation (NRC Office of Investigations Report No. 2-99-025)," December 22, 1999.**

   "Based on the information developed during the investigation, the NRC concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. Specifically, 10 CFR 50.5(a)(2) prohibits any licensee, employee, or contractor of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. The OI investigation concluded that you intentionally and deliberately adulterated your urine sample to avoid detection of illegal drug usage."

   "Your attempt to subvert TVA's fitness for duty program is unacceptable behavior in the nuclear industry. Therefore, after consultation with the Director, Office of Enforcement, the NRC has decided to issue the enclosed Notice to you based on your violation of regulations regarding deliberate misconduct."

"In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of the significant action [job termination] already taken by the licensee against you."

10. **J. E. Dyer, Regional Administrator, to Mr. Jorge A. Labarraque, "Notice of Violation (NRC Office of Investigations Report No. 3-1998-033)," December 20, 1999.**

"After a review of the information developed during the investigation, the information provided during the predecisional enforcement conference, and the information provided subsequent to the conference, including information provided by the Manager of QS [Quality Systems] in a letter dated July 17, 1999, and information provided by you and the Corporation in separate letters dated July 23, 1999, the NRC has determined that you engaged in deliberate misconduct in taking certain actions that affected the Manager of QS. Thee actions were in violation of the Commission's requirements in 10 CFR 76.7, "Employee Protection.""

"The Manager of QS had raised safety concerns. ... Subsequently, you transferred the Manager of QS from a managerial position in the Safety, Safeguards, and Quality Department to a non-managerial position in the Training Department on August 10, 1998."

"You should be aware that NRC regulations allow the issuance of civil sanctions, such as a Notice of Violation, directly against unlicensed persons who engage in deliberate misconduct causing a violation of NRC requirements. ... An Order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC licensed facilities. The NRC gave consideration to the issuance of an Order in this case. However, after consultation with the Director, Office of Enforcement, I have decided to issue the enclosed Notice of Violation and refrain from issuing such an Order."

11. **Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. John D. Tipton, "Notice of Violation (NRC Office of Investigations Report No. 2-99-023)," November 23, 1999.**

"Based on the information developed during the investigation, the NRC concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. Specifically, 10 CFR 50.5(a)(2) prohibits any licensee, employee, or contractor of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. The OI investigation concluded that you intentionally and deliberately adulterated your urine sample during a random drug screening on November 9, 1998, to avoid detection for illegal drug usage.

"During your OI interview, you denied the use of illegal drugs or that you attempted to subvert the fitness for duty testing program while employed at the Watts Bar Nuclear Plant. ... Nonetheless, based on discussions with the licensee's Medical Review Officer (MRO), your first urine sample temperature was discovered to be outside the acceptable range, indicating that either water was added to the sample or the sample was substituted with one having no evidence of drug Laboratory testing of the second urine sample submitted under direct observation indicated a positive result for an illegal drug."

"Your attempt to subvert TVA's fitness for duty program is unacceptable behavior in the nuclear industry. Given your responsibilities as a foreman for Stone and Webster at the Watts Bar facility,

your actions were particularly egregious because they indicated a deliberate lack of regard for NRC requirements.

"In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of the significant action [job termination] already taken by the licensee against you."

12. **Luis A. Reyes, Regional Administrator, Nuclear Regulatory Commission, to Mr. Ross H. Stromberg, "Notice of Violation (NRC Office of Investigations Report No. 2-99-022)," November 23, 1999.**

"Based on the information developed during the investigation, the NRC concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. Specifically, 10 CFR 50.5(a)(2) prohibits any licensee, employee, or contractor of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. The OI investigation concluded that you deliberately adulterated your urine sample during a random drug screening on October 15, 1998, to avoid detection for illegal drug usage."

"During your OI interview, you denied the use of illegal drugs or that your actions represented an attempt to subvert the fitness for duty testing program while employed at the Browns Ferry Nuclear Plant. ... However, based on the high concentration of potassium nitrate found in your urine sample, the licensee concluded that you attempted to subvert the fitness for duty test."

"Your attempt to subvert TVA's fitness for duty program is unacceptable behavior in the nuclear industry. Given your responsibilities as a supervisor for General Electric at the Browns Ferry facility, your actions were particularly egregious because they indicated a deliberate lack of regard for NRC requirements."

"In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of the significant action [job termination] already taken by the licensee against you."

13. **J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Mr. Raymond E. Landrum, "Notice of Violation (NRC Office of Investigations Report No. 3-1998-012)," November 3, 1999.**

"After review of the information developed during the investigation, the information provided during the enforcement conference, and the information provided by ComEd in a letter dated July 22, 1999, the NRC has determined that as Shift Operations Supervisor [at the Zion nuclear plant], you engaged in deliberate misconduct in taking certain actions that affected a Senior Reactor Operator (SRO) who raised nuclear safety concerns. These actions were in violation of the Commission's requirements in 10 CFR 50.7 (Employee Protection). Specifically, as a result of the SRO's having recommended that a component cooling water (CCW) pump be removed from service because of an oil leak and raising a concern about the performance of a safety-related diesel generator load sequencing timer, you deferred the SRO's participation in the shift manager qualification process (which he had previously been instructed to begin by a prior SOS) and lowered the SRO's performance appraisal evaluation which had been prepared by the SRO's shift manager."

"[T]he NRC has concluded that the actions taken against the SRO were due in part to his participation in activities protected by 10 CFR 50.7. By discriminating against the SRO for raising safety concerns, you deliberately caused ComEd to be in violation of NRC requirements. As such, you personally violated 10 CFR 50.5(a) which specifies that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order issued by the Nuclear Regulatory Commission. Since the adverse employment actions were taken against the SRO by you, a mid-level plant management official, this violation has been categorized ... at Severity Level II."

"You should be aware that NRC regulations allow the issuance of civil sanctions, such as a Notice of Violation, directly against unlicensed persons who engage in deliberate misconduct causing a violation of NRC requirements. ... An Order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC licensed facilities. The NRC gave consideration to the issuance of an Order in this case. However, after consultation with the Director, Office of Enforcement, I have decided to issue the enclosed Notice of Violation and refrain from issuing such an Order."

14. **J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Mr. Charles H. Tewksbury, "Notice of Violation (NRC Office of Investigations Report No. 3-97-040)," September 30, 1999.**

"After a review of the information developed during the OI investigation, as well as the information developed during the IPC investigation and the information that you have provided, the NRC has concluded that you engaged in deliberate misconduct in that you discriminated against the QV [quality verification] inspector [at the Clinton nuclear plant] by not recommending the QV inspector for promotion to the position of lead QV inspector in reprisal for having contacted the NRC. ... By discriminating against the QV inspector for raising safety concerns, you deliberately caused IPC [Illinois Power Company] to be in violation of NRC requirements. As such, you personally violated 10 CFR 50.5(a), which specifies that any employee of an NRC licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order issued by the NRC."

"This violation of 10 CFR 50.5(a)(1), "Deliberate Misconduct," represents a significant concern to the NRC because it represents retaliation by you, a first line supervisor, against a subordinate employee for discussing safety issues with the NRC."

"The NRC has decided to issue the enclosed Notice of Violation to you in lieu or an order, based, in part, on the disciplinary actions already taken against you by IPC."

15. **Hubert J. Miller, Regional Administrator, Nuclear Regulatory Commission, to Mr. Gary Pageau, "Notice of Violation (NRC OI Investigation I-1998-005)," August 3, 1999.**

"After review of the information developed during the investigation, the information provided during the conferences, and other information provided subsequent to the conferences, including the additional information provided in a letter submitted by your attorney on your behalf dated June 15, 1999, the NRC has concluded that you engaged in deliberate misconduct while acting as a foreman for WPC by selecting a WPC electrician for a layoff, at least in part, in retaliation for his having raised a safety concern. Specifically, the WPC electrician identified that two electrical conductors in the CBA [control building air conditioning] control panel [at the Seabrook nuclear plant] were

terminated in a configuration opposite that shown in the applicable design documents. The electrician first raised his concern to you, and later brought the discrepancy to the attention of a NAESCo quality control (QC) inspector on January 7, 1998. Subsequently, on January 16, 1998, you, while acting in your supervisor's absence, selected this electrician for a layoff."

"By discriminating against the electrician for raising a safety concern, you deliberately caused NAESCo and WPC to be in violation of NRC requirements. As such, you personally violated 10 CFR 50.5(a), which specifies that any employee of an NRC licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order issued by the Nuclear Regulatory Commission."

"You should be aware that NRC regulations allow the issuance of civil sanctions, such as a Notice of Violation, directly against unlicensed persons who engage in deliberate misconduct, causing a violation of NRC requirements. ... An Order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC licensed facilities. The NRC gave consideration to the issuance of an Order in this case. However, after consultation with the Director, Office of Enforcement, I have decided to issue the enclosed Notice of Violation and refrain from issuing such an Order."

16. **J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Mr. Neil Everson, "Notice of Violation (NRC Office of Investigations Report No. 3-98-017)," July 20, 1999.**

"In summary, you inadvertently brought a handgun to the Zion Station on February 24, 1998, which was detected during the x-ray search of your belongings. Upon detection of the handgun, the x-ray equipment operator failed to secure the weapon to prevent your access to it. You retrieved the weapon and asked the x-ray equipment operator to not report the incident because you feared your employment would be terminated for bringing a firearm to the Zion Station. With your assistance, the x-ray equipment operator erased the image of the handgun from the x-ray monitor. You then left the access control area of the Zion Station. You later returned to the personnel search area and again asked the x-ray equipment operator to not report the event. At that time you attempted to give cash to the x-ray equipment operator, which the operator did not accept."

"The NRC staff considered issuing an Order prohibiting your involvement in licensed activities as a result of your actions. However, the NRC has decided to issue the enclosed Notice of Violation after considering the circumstances of this case, including the facts that: (1) ComEd took action regarding your wrongdoing, including removing your unescorted access privileges at the Zion Station; (2) you are no longer employed at Zion and, (3) upon your termination of employment at the Zion Station, ComEd annotated in the Personnel Access Database System that your access to the facility was not terminated favorably."

17. **Hubert J. Miller, Regional Administrator, Nuclear Regulatory Commission, to Mr. David Branha, "Notice of Violation (NRC OI Investigation 1-98-011)," April 30, 1999.**

"PSE&G reported that while you were employed at its Salem facility, you made a change to a procedure without proper review, and you signed a record which indicated that all required independent verifications had been performed of a calculation for an intended release from the Chemical Volume Control System Monitor Tank, when not all of the required independent verifications had been done. Based upon its investigation, OI concluded that you deliberately falsified sections of the procedure by indicating that two independent verifications of the Radioactive Liquid Release Rate calculation had been done, when you knew that they had not been performed."

"By falsifying the record of the release rate calculation verifications, you deliberately caused PSE&G to be in violation of NRC requirements. As such, you personally violated 10 CFR 50.5(a) which specifies which specifies that any employee of an NRC licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order issued by the Nuclear Regulatory Commission."

"You should be aware that NRC regulations allow the issuance of civil sanctions, such as a Notice of Violation, directly against unlicensed persons who engage in deliberate misconduct, causing a violation of NRC requirements. ... An Order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC licensed facilities. The NRC gave consideration to the issuance of an Order in this case. However, after consultation with the Director, Office of Enforcement, I have decided to issue the enclosed Notice of Violation and refrain from issuing such an Order."

18. **Hubert J. Miller, Regional Administrator, Nuclear Regulatory Commission, to Mr. Eric DeBarba, "Notice of Violation (NRC Office of Investigations (OI) Case No. 1-96-002)," April 6, 1999.**

"Based on a review of the evidence in the matter, the NRC has concluded that your conduct in demoting the two supervisors [at the Millstone nuclear plant] contributed to violations of NRC regulatory requirements. As a result, the NRC has taken enforcement action against NNECo for a violation of 10 CFR 50.7 (employee protection). At the time of the discrimination, you were the Vice President for Nuclear Engineering Services."

"After a careful assessment of your involvement in this matter, the NRC has confirmed that your actions with regard to the two supervisors violated 10 CFR 50.5. Given the significance of your actions, we are issuing the enclosed Notice of Violation for your violation of Section 50.5. ... Retaliatory personnel actions, especially involving senior level management, are very serious matters and will not be tolerated by the NRC."

19. **James E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to Charles W. Davis, "Notice of Violation and Exercise of Enforcement Discretion (NRC Inspection Report Nos. 50-373/98017(DRS); 50-374/98017(DRS), and NRC Office of Investigations Report No. 3-98-015," March 29, 1999.**

"As a supervisor for the Raytheon Corporation, a contractor at the ComEd LaSalle County Station, you received training on the for-cause FFD [fitness for duty] testing requirement. Moreover, you knew from prior experience that you were required to direct the employee to FFD for-cause testing before the employee left the LaSalle County Station. However, on May 11, 1998, you deliberately allowed an employee, upon whom you had already detected the odor of alcohol, to leave the station without the employee submitting to a for-cause FFD test in violation of ComEd's procedure. Your actions on May 11, 1998, placed you in violation of 10 CFR 50.5, and caused ComEd to be in violation of its NRC-required FFD program."

"The NRC staff considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of the employment action already taken by ComEd against you."

Attachment 4
NO Sanctions of Any Sort

1. **Kenneth P. Barr, Chief - Plant Support Branch, Nuclear Regulatory Commission, to Mr. David A. Christian, Senior Vice President and Chief Nuclear Officer, Virginia Electric and Power Company, "NRC Inspection Report Nos. 50-280/00-08, 50-281/00-08 and Office of Investigations Report No. 2-2000-013," October 31, 2000.**

   "Based on the OI investigation and the inspection, a violation fo NRC requirements was identified. Specifically, the employee [at the Surry nuclear plant] failed to comply with the reporting requirements of procedure VPAP-0105, which is a procedure required by the Physical Security Plan. In addition the NRC concluded that the actions of the individual were willful. Due to the willful nature of the issue, it has not been assessed in accordance with the Significance Determination Process. However, the issue meets the criteria specified in Section VI.A.1.d of the Enforcement Policy dated May 1, 2000, and is therefore identified as a non-cited violation."

   "The licensee's subsequent investigation determined that the individual was arrested on misdemeanor charges, failed to report the arrest, and had been trained annually on the licensee's self-reporting requirements."[57]

2. **H. B. Barron, Jr., Vice President, Duke Energy Corporation, to U.S. Nuclear Regulatory Commission, "McGuire Nuclear Station Unit 1 and Unit 2 / Docket No. 50-369 and 50-370 / Special Report 369/99-02(S), Revision 0 / Problem Investigation Process No. M-99-5040," December 1, 1999.**

   "On November 1, 1999 it was discovered that an employee (i.e., Employee A) of a roofing contractor with unescorted access authorization had submitted false background information and accessed the protected area. The submitted background information was false, because it did not identify a past positive drug screen at a non-nuclear employer. Employee A did enter the McGuire Nuclear Station protected area to perform assigned roofing work. Employee A was motivated by a need for employment and not by malicious intent with respect to plant equipment. ... The cause of this event is inappropriate action though willful falsification of information. ... Employee A's unescorted access was terminated upon discovery on November 1, 1999."

3. **James C. Linville, Director - Millstone Inspection Directorate, Nuclear Regulatory Commission, to Mr. R. P. Necci, Vice President - Nuclear Oversight and Regulatory Affairs, Northeast Nuclear Energy Company, "NRC Office of Investigations Report No. 1-1997-036," January 10, 2000.**

   "The violation involves a Senior Health Physics Technician deliberately altering a record documenting the ALARA controls taken for an activity involving the transfer of radioactive waste. ... After the transfer occurred and workers were contaminated, the Senior Health Physics Technician altered the ALARA Checklist Discussion Sheet by adding a statement that it was likely for personnel contaminations to occur during the job. The statement added to the ALARA Checklist Discussion Sheet was material in that it was provided to, and misled the NRC inspector. The inspector believed that the likelihood of workers becoming contaminated was in the documentation prepared prior to the job and was discussed at the pre-work briefing, indicating that proper ALARA controls were in place as required by procedure. In fact, the investigation indicated that this statement was not provided."

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[57] Robert C. Haag, Chief - Reactor Projects Branch 5, Nuclear Regulatory Commission, to Mr. David A. Christian, Senior Vice President and Chief Nuclear Officer, Virginia Electric and Power Company, "Surry Nuclear Power Station - NRC Integrated Inspection Report Nos. 50-280/00-03, 50-281/00-03 and 72-002/00-04," July 17, 2000.

4. **J. J. Sheppard, Vice President - Engineering and Technical Services, South Texas Project Nuclear Operating Company, to U.S. Nuclear Regulatory Commission, "South Texas Project Unit 1 / Docket No. STN 50-498 / Safeguards Event Report 99-S05 / Unescorted Access Inappropriately Granted," January 5, 2000.**

   "On 9/29/99, Access Authorization personnel granted interim unescorted access to a contract pipefitter. Later that afternoon, a fax was received from the firm contracted to perform background checks for STPNOC containing derogatory information obtained subsequent to their issuance of the preliminary background report on this individual. Specifically, a previous employer had reported "instances" where the subject had failed drug and alcohol pre-employment screening tests. These failures, which occurred within the 3-year scope for access denial prescribed by OPHRP01-ZA-001, were not revealed by the individual on his Personnel History Statement, or during interviews conducted as part of the initial badging process. ... Unescorted access for the individual was revoked under favorable conditions on 10/27/99 following completion of his assigned task. On 11/8/99, he applied for access reinstatement for a second period of employment. ... Upon completing her review of the file, AC3 [access coordinator #3] approved reinstatement of the individual's interim unescorted access. On the afternoon of 11/10/99, AC1 received a fax containing the full background investigation report for the individual, as well as the employment information requested that morning by AC2. The report clearly stated that the subject had been terminated by a previous employer following failure of pre-employment drug/alcohol screening tests. ... The individual's unescorted access was formally revoked at 1124 on 12/9/99."

5. **Cynthia D. Pederson, Director - Division of Nuclear Materials Safety, Nuclear Regulatory Commission, to Mr. Oliver D. Kingsley, Jr., President - Nuclear Generation Group, Commonwealth Edison Company, "NRC Office of Investigations Report No. 3-1999-022," December 13, 2000.**

   "According to the information developed by OI, a pipefitter was contaminated on Octovber 31, 1997, and at least one ComEd employee and two Numanco employees provided incomplete and inaccurate information during the ComEd root cause and Event Response Team investigations. The reports of both ComEd investigations were provided to the NRC during a subsequent radiation protection inspection. As a result of the information developed during the investigation, OI concluded that the three individuals provided incomplete and inaccurate information. After reviewing all of the available information, the NRC staff has determined that a violation of NRC requirements did not occur and has closed this enforcement action."

6. **Nuclear Regulatory Commission, Daily Event Report No. 37312, "24 Hour Fitness for Duty Report," September 13, 2000.**

   "A licensed operator was administered a for-cause breathanalyzer test after observation by operating staff that the individual's breath smelled of alcohol. The operator was oncoming and was not allowed to take the watch. Operations management personnel directed that the individual be taken home pending management review of the situation."

7. **Nuclear Regulatory Commission, Daily Event Report No. 37433, "24-Hour Fitness-For-Duty Report Involving a Contract Supervisor," October 17, 2000.**

   "A contract supervisor was determined to be under the influence of alcohol during a test for cause. The individual's access to the plant has been terminated."

8. **Nuclear Regulatory Commission, Daily Event Report No. 37311, "Contractor Tested Positive During Random Test for Drugs and Alcohol," September 12, 2000.**

   "Contract Supervisor determined to test positive as a result of a random drug and alcohol screening. Per applicable administrative procedures the individual's access authorization to the protected area was terminated."

9. **Nuclear Regulatory Commission, Daily Event Report No. 37231, August 16, 2000.**

   "A contract supervisor tested positive for alcohol during random testing. His access was immediately suspended. Review of his work determined that their [sic] was no impact on plant safety."

10. **Nuclear Regulatory Commission, Daily Event Report No. 37007, "24 Hour Fitness for Duty Event," May 16, 2000.**

    "At 0930 on 05/15/00, a licensee supervisor tested positive for alcohol during a random drug and alcohol test. The licensee withdrew the employee's access authorization to the plant protected area after verification of the positive test."

11. **David H. Oatley, Vice President - Diablo Canyon, Pacific Gas and Electric Company, to U.S. Nuclear Regulatory Commission, "Physical Security Event Report 1-2000-S01-00 / Fake Bomb in the Protected Area due to Unprofessional Behavior," December 5, 2000.**

    "On November 5, 200, at 0030 PST, with Unit 1 in Mode 3 (Hot Standby) at 0 percent power, and Unit 2 in Mode 1 (Power Operation) at 100 percent power, a Nuclear Security Officer discovered what appeared to be an explosive device in a building in a protected area. ... Investigations revealed the device to be a fake, not containing an explosive and incapable of detonation. ... The device consisted of a pancaked putty-like material, a battery pack and a small circuit board, all connected with wires. ... The individual who created the device was a contract electrician who worked at DCPP periodically over the past 10 years. During interviews, he stated the device was originally created sometime in July. ... While the individual responsible for creating the device had his access terminated on October 28, 2000, future unescorted access has been suspended pending a formal review of the investigations."

12. **J. E. Dyer, Regional Administrator, Nuclear Regulatory Commission, to R. P. Powers, Senior Vice President - Nuclear Generation Group, American Electric Power Company, "Notice Of Violation (NRC Office Of Investigations Report No. 3-1998-041)," May 5, 2000.**

    "This letter refers to the investigation by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) conducted November 16-23, 1999, at the American Nuclear Power Company's (AEP's) Buchanan engineering offices. The investigation was initiated to determine whether a contractor engineer employed by Cataract, Inc., who was hired to perform engineering tasks for the D. C. Cook Nuclear Power Plant was discriminated against because he had previously engaged in protected activity. Based on evidence developed during the investigation, OI determined that discrimination had occurred in violation of the NRC's Employee Protection regulation, 10 CFR 50.7. ... Specifically, the contractor engineer reported to AEP's engineering offices on October 1, 1998, for a six-month assignment. The contractor engineer had previously engaged in protected activity in that he had testified as an intervenor at an NRC licensing hearing while employed at the Comanche Peak

Nuclear Power Plant. On the day that he reported to work at AEP, an AEP engineer recognized the contractor engineer from previous employment at Comanche Peak and advised the supervisor that the contractor engineer was "trouble" and that he had testified. The supervisor was the acting AEP Nuclear Engineering Design Manager (design manager) and was employed by Duke Engineering Services. The design manager terminated the contractor engineer's employment with AEP on October 7, 1998."

13. **John A. Grobe, Director - Division of Reactor Safety, Nuclear Regulatory Commission, to Mr. Michael T. Coyle, Site Vice President, AmerGen Energy Company, "Non-Cited Violation (Office of Investigations Report No. 3-1999-006)," January 7, 2000.**

"This letter pertains to a recently completed investigation by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) concerning an apparent violation of 10 CFR 50.9, "Completeness and Accuracy of Information." In particular, information documented in a Clinton Power Station (CPS) safety evaluation (SE) and presented at a meeting on February 12, 1999, between NRC inspectors and members of the CPS staff, indicated that the containment automatic depressurization system (ADS) was independently capable of maintaining the reactor water level above the top of active fuel in the event of a feedwater line break with the reactor core cooling (RCIC) and the high pressure core spray (HPCS) systems unavailable. However, prior to the SE being issued on November 16, 1998, a member of the CPS staff, who attended the meeting on February 12, 1999, was aware that General Electric Nuclear Engineering (GENE) has evaluated this issue and GENE determined that active fuel would be momentarily uncovered in this scenario, but it would not have a negative impact on the fuel. The Office of Investigations concluded that while the CPS staff member was aware of the information from GENE, he did not take any action to correct the inaccurate information presented at the meeting on in the SE. ... Based on the information developed during the OI investigation, the NRC concluded that a violation of 10 CFR 50.9 occurred. However, the NRC has decided to treat this issue as a non-cited violation...."

Table 1: Listing of NRC Enforcement Actions Against Individuals

Enforcement Action Criterion	Case (Format: Attachment-Case Number)																						
	1-1	1-2	2-3	2-1	3-1	3-2	3-3	3-4	3-5	3-6	3-7	3-8	3-9	3-10	3-11	3-12	3-13	3-14	3-15	3-16	3-17	3-18	3-19
Willfully causing a licensee to be in violation of NRC requirements		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓			✓	✓	✓			✓	✓
Willfully taking action that would have caused a licensee to be violation of NRC requirements but the action did not do so because it was detected and corrective action was taken	✓			✓									✓		✓	✓				✓	✓		
Recognizing a violation of procedural requirements and willfully not taking corrective action		✓					✓				✓									✓			✓
Willfully defeating alarms which have safety significance																							
Unauthorized abandoning of reactor controls																							
Dereliction of duty																							
Falsifying records required by NRC regulations or by the facility license			✓			✓							✓		✓	✓				✓	✓		

Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC																								
Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization																								
Submitting false information and as a result gaining unescorted access to a nuclear power plant	✓			✓																				

Table 2: Listing of NRC Enforcement Inactions Against Individuals

Enforcement Action Criterion	Case (Format: Attachment-Case Number)												
	4-1	4-2	4-3	4-4	4-5	4-6	4-7	4-8	4-9	4-10	4-11	4-12	4-13
Willfully causing a licensee to be in violation of NRC requirements	✓					✓						✓	✓
Willfully taking action that would have caused a licensee to be violation of NRC requirements but the action did not do so because it was detected and corrective action was taken		✓	✓	✓			✓	✓	✓	✓			
Recognizing a violation of procedural requirements and willfully not taking corrective action	✓										✓		✓
Willfully defeating alarms which have safety significance													
Unauthorized abandoning of reactor controls													
Dereliction of duty											✓		
Falsifying records required by NRC regulations or by the facility license			✓										

Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC			✓		✓								✓
Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization	✓		✓		✓								✓
Submitting false information and as a result gaining unescorted access to a nuclear power plant		✓		✓									