

new docs

2000-0014

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RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

RESPONSE TYPE FINAL PARTIAL

REQUESTER

Maria Webb

DATE

FEB 01 2000

PART I. -- INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES **A** Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES **B** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- APPENDICES **B** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

PART I.A -- FEES

- AMOUNT * You will be billed by NRC for the amount listed. None. Minimum fee threshold not met.
- \$ You will receive a refund for the amount listed. Fees waived.

* See comments for details

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed *Carol Ann Reed*

**APPENDIX A
RECORDS ALREADY AVAILABLE IN THE PDR**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	04/24/98	9804300006	Letter from Scott Patulski, Wisconsin Electric, to NRC, regarding Reply to Apparent Violation. (6 pages)
2.	09/24/99	9910060121	Office of Enforcement Notificaiton of Significant Enforcement Action. (1 page)

**APPENDIX B
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	Undated	Various draft copies of letter to Thomas Zarges, Morrison Knudsen (MK), regarding Confirmatory Order and Exercise of discretion. (79 pages)
2.	Undated	Office of Enforcement (OE) Headquarters Traveler. (1 page)
3.	Undated	E-mail from Michael Stein, OE, to Brent Clayton, et. al., regarding MK Order, with attached draft letter and Order. (10 pages)
4.	Undated	Draft copies of letter to J. Patrick Hickey, Shaw, Pittman, Potts & Trowbridge, regarding MK. (17 pages)
5.	Undated	Handwritten notes. (1 page)
6.	Undated	Typed notes on Morrison Knudsen. (1 page)
7.	02/12/98	EA Request & Enforcement Strategy Form from M. Stein to C. Weil. (1 page)
8.	02/17/98	Memo from James Lieberman to A. Beach, S. Collins & J. Goldberg, subject: OI Report 3-97-013: Morrison Knudsen Corporation: Alleged Discrimination Against the Corporate Welding Engineer. (2 pages)
9.	03/05/98	EA Request & Enforcement Strategy Form. (1 page)
10.	10/23/98	EA Request & Enforcement Strategy Form from M. Stein to B. Clayton/C. Weil. (1 page)
11.	10/29/98	EA Request & Enforcement Strategy Form from M. Stein to B. Clayton/C. Weil. (1 page)
12.	12/3/98	EA Request & Enforcement Strategy Form from M. Stein to B. Clayton. (1 page)

13. 12/24/98 E-mail from Michael Stein, responding to e-mail from C. Weil regarding MK Discussion Topics. (1 page)
14. 05/07/99 EA Request & Enforcement Strategy form from M. Stein to C. Weil/B. Clayton. (1 page)
15. 06/21/99 Handwritten notes of MK meeting. (1 page)
16. 07/02/99 E-mail from s. Chidakel to M. Stein, responding to e-mail from Stein regarding MK letter. (1 page)
17. 07/09/99 Letter from J. Lieberman to J. P. Hickey regarding 6/21/99 meeting on Confirmatory Order. (5 pages)
18. 07/23/99 Letter from J. Patrick Hickey to J. Lieberman regarding Confirmatory Order to Morrison Knudsen. (2 pages)
19. 08/09/99 Letter from J. Patrick Hickey to J. Lieberman regarding MK Corporation. (3 pages)
20. 08/20/99 E-mail from V. Ordaz to M. Stein re MK Confirmatory Order. (1 page)
21. 08/23/99 E-mail from M. Stein to J. Monninger re: MK Order, with attached draft.. (10 pages)
22. 09/13/99 E-mail from M. Stein to Brent Clayton, et al, re: MK Order. (1 page)
23. 09/15/99 E-mail from V. Ordaz to M. Stein regarding MK Confirmatory Order, with attached draft copy of Order. (10 pages)
24. 09/24/99 Letter from F. Miraglia to T. Zarges subject: Confirmatory Order (Effective Immediately). (10 pages)
25. 09/27/99 Memo from R. W. Borchardt to D. Meyer, subject: Confirmatory Order (Effective Immediately) - Morrison Knudsen Corporation, Cleveland, Ohio. (2 pages)
26. 10/19/99 Note from Mike Stein to File EA 98-081 MK Order. (1 page)

DRAFT

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER AND EXERCISE OF DISCRETION

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) in order to confirm the commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent as exhibited in Mr. Patrick Hickey's letter dated June X, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not pursue a Notice of Violation or a civil penalty in this case.

For clarification of the requirements as set forth in Section V of the Order, MK is to submit to the Regional Administrator, Region III, only the materials requested in the enclosed Confirmatory Order, Section V.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Malcolm Knapp
Deputy Executive Director
For Regulatory Effectiveness

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.

In the Matter of
Morrison Knudsen

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EA 98-081

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple licensee sites. MK headquarters is located in Cleveland, Ohio.

II

NRC Office of Investigations (OI) Report No. 3-97-013 concluded that discrimination occurred when MK removed the Group Welding Engineer (GWE) on January 15, 1997 and subsequently transferred him following the GWE's documentation of safety concerns on January 14, 1997. In addition, a Department of Labor Administrative Law Judge, on October 28, 1997, also determined after an evidentiary hearing, in 97-ERA-34, that discrimination was a factor in the removal and transfer of the GWE. The ALJ's finding was upheld by a DOL Administrative Review Board on . The NRC staff invited MK to a predecisional enforcement conference (PEC) to discuss the apparent violation, which was fully detailed in correspondence with MK on March 25, 1998. By letter dated April 22, 1999, MK submitted additional information for consideration by the NRC staff. The April 22, 1999, letter was in response to the GWE's letter and comments on the PEC dated March 25, 1999.

MK maintains that no violation of 10 C.F.R. 50.7 occurred. MK's response was that the evidence demonstrated that inadequate performance by the GWE was the basis for his removal from the GWE position and for his transfer to the MK West Virginia job site. The NRC's Office of Investigations (OI) concluded that discrimination was a factor in the adverse actions taken

against the GWE. The NRC staff believes that MK management discriminated against the GWE as a result of the GWE preparing a Quality Finding Report (QFR) which identified a number of deficiencies in the MK Point Beach welding program. The QFR was prepared by the GWE at the request of his supervisor following an independent audit by the Hartford Steam Boiler Company which also identified several deficiencies in MK's welding program. As a result of the submittal of the QFR, the GWE was removed from his position and transferred to the West Virginia job site.

III

MK has planned additional actions to assess the work environment at its corporate headquarters and temporary job sites. Specifically, MK plans: (1) to conduct a comprehensive cultural assessment to be performed by an independent consultant and the results of such an assessment will be utilized by MK in improving its employee concerns program, and (2) mandatory continuing training programs for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in dealing with employees who raise safety concerns in the workplace. MK agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. It was agreed that such training would be conducted by an independent trainer, i.e. non-MK employee, with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK also plans to take the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this confirmatory order and

employee whistleblower protection rights under the Energy Reorganization Act, as amended, at all MK temporary job sites and at their corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve MK's employee concerns program as stated in the independent third party assessment; (3) periodic update of an employee cultural survey to ensure that MK employees feel free to raise safety concerns without fear of retaliation; (4)

IV

Since MK reached a settlement with the GWE on **(Date)** ; since MK has taken the corrective actions as outlined above; and since MK has planned to monitor the safety environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff is satisfied that its concerns regarding employee protection at MK corporate headquarters and at its temporary job sites can be resolved through confirmation of MK's plans as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not pursue a Notice of Violation or a civil penalty in this case.

By letter dated **(Date)** , MK consented to issuance of this Order with the commitments described in Section V, below, and to waive its right to a hearing on this Order. MK further consented to the immediate effectiveness of this Order.

I find that MK's commitments, as set forth in Section V, below, are acceptable and necessary and conclude that with these commitments, MK's process for addressing employee protection and safety concerns will be enhanced. In view of the foregoing, I have determined that public

health and safety require that MK's commitments be confirmed by this Order. Based on the above and MK's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. Section 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN SHALL DO THE FOLLOWING:

[Audit - cultural assessment]

1. Beginning in September, 1999, MK will integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment, as described in MK's (Date) Submission.

Audit - 30 days after the job begins He + file requests.

Include language from submission. MK shall submit to the Regional Administrator, Region III, a copy of the cultural assessment and the results obtained as a benchmark. MK shall agree to conduct three additional annual assessments, and submit the results to the NRC, to assure that MK employees feel free to raise safety concerns without fear of retaliation.

Audit - Permanent & Craft employees

Summary
Audit to access whether employees know about 50.7, training is done, know how to implement the program.
~~Permanent Audit~~

← Exit interviews - Do you have safety concerns?

2. MK shall contract an independent consultant with experience in employee concerns program to conduct an independent evaluation of MK's ECP. MK shall implement the recommendations outlined by the consultant to ensure a safety conscious work environment at MK. MK shall share these recommendations with the NRC.

Permanent employees also exit Hotline to site or MK headquarters.

Adopt or explain in writing why they cannot adopt the recommendations.

3. MK will conduct mandatory continuing training programs on an annual basis for all supervisors and managers. This program will be conducted by an independent trainer and include:

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of SCWE.

*Initial training new
Add'l training in 12 month period
Non Supervisors Part of Access Program to train the craft
Access authorize outside trainer to train the supervisors
Curtley Jen they staff*

4. MK shall issue a company wide publication to inform all of its employees of this Confirmatory Order as well as MK employee rights to raise safety concerns to MK and the NRC without fear of retaliation. This publication shall also be posted at all MK temporary job sites and at MK corporate headquarters.

to MK permanent employees _____

The Regional Administrator, Region III, may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

MK needs to inform licensee of allegations of H&I.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include.....

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Malcolm Knapp
Deputy Executive Director for
Regulatory Effectiveness

Dated at Rockville, Maryland
this Day of June, 1999

G: MKORD.WPD

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) and its affiliate, SGT, LLC, in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, LLC, has consented to the issuance of the Confirmatory Order and waived its right to request a hearing on all or any part of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Mr. R. W. Borchardt, Director, Office of Enforcement, who can be reached at (301) 415-2741. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.
M. Reddemann, Site Vice President
Point Beach Nuclear Plant

In the Matter of

Morrison Knudsen
SGT, LLC

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EA 98-081

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple facilities licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission). MK headquarters is located in Cleveland, Ohio. SGT, LLC (SGT) is an affiliate of MK involved in the steam generator replacement projects for MK.

II

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if the former Corporate Group Welding Engineer (GWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013), OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the GWE's identification of deficiencies in welding procedures by MK and SGT employees at the Point Beach Nuclear Plant was at least a contributing factor in MK's decision to remove him from his position as MK Corporate GWE on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ), in DOL Case No. 97-ERA-34, determined that the removal of the GWE was in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation of the NRC's employee protection requirements

(10 CFR 50.7). MK retained the services of a law firm to perform an independent investigation. MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity. While MK and SGT do not agree that a violation of the Energy Reorganization Act, as amended, or the Commission's regulations occurred, in response to the DOL and OI findings, MK and SGT have agreed to take the actions as described in Section V of this Order.

III

MK, and its affiliate SGT, have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary nuclear job sites. Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training programs for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, the definition of protected activity and discrimination, and appropriate responses to the raising of safety concerns by employees. MK and SGT also agreed that such training will be conducted by an independent trainer with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK and SGT, also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this Confirmatory Order and employee protection under the Energy Reorganization Act, as amended, Section 211, and NRC Form 3, at all MK and SGT temporary nuclear job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT employee concerns program as stated in the independent third party assessment; (3) periodic updates of an employee cultural survey developed by an independent contractor to ensure that MK and SGT employees feel free to raise safety concerns without fear of retaliation; and (4) the expansion of the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to assure itself that such employees felt free to raise safety concerns while employed by MK or SGT.

IV

Since MK and SGT have committed to taking comprehensive corrective actions as set forth below, and since MK and SGT have committed to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff has determined that its concerns regarding employee protection at MK corporate headquarters and at MK and SGT temporary nuclear job sites can be resolved through confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT consented to waive any right to a hearing on this Order. MK and SGT further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT SHALL DO THE FOLLOWING:

1. MK and SGT shall hire an independent consultant to conduct audits, to review the MK and SGT Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in Condition #2 of this Order. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's ECP to be completed by January, 2000. MK and SGT shall inform the Director, Office of Enforcement as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a

safety conscious work environment exists at MK and SGT temporary nuclear job sites or explain to the Director, Office of Enforcement why it cannot implement such recommendations outlined by the consultant. MK and SGT shall provide the recommendations of the consultant to the NRC and send this information to the Director, Office of Enforcement.

2. MK and SGT will conduct mandatory continuing training programs on an annual basis for all MK and SGT supervisors and managers. All temporary craft and permanent MK and SGT employees should receive initial employee protection training as part of their access program or orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in Condition #1 of this Order, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safety conscious work environment at MK and SGT and at their temporary nuclear job sites.

3. MK and SGT will integrate, into their overall program for enhancing the work environment and safety culture at their corporate headquarters and their temporary nuclear job sites, a cultural assessment survey, i.e. questionnaire, developed by the experienced independent consultant. MK and SGT agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, *e.g.* that the existence of the safety concerns hotline is well known to all employees. MK and SGT also agree to conduct audits at their temporary nuclear job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT also agree to expand their exit survey to include safety conscious work environment issues and to conduct exit surveys of their permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of this Order by sending the materials to the Director, Office of Enforcement. MK and SGT will provide to the NRC information pertaining to any later actions to address issues raised by the survey and audit results.

4. Following the issuance of this Confirmatory Order, MK and SGT will issue and post this Confirmatory Order, Section 211 of the Energy Reorganization Act, as amended, and NRC Form 3, to inform all of its employees of this Confirmatory Order, as well as their right to raise safety concerns to management and to the NRC without fear of retaliation. These publications shall also be posted at all temporary nuclear job sites and at the companies' corporate headquarters.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to MK and SGT. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. **AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER**

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of September, 1999

Distribution
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 HBell, OIG
 EA File

OE	NRR	OGC	RIII	OE:D	DEDR
MStein	SCollins	DDambly	JDyer	RWBorchardt	FMiraglia
8/ /99	8/ /99	8/ /99	8/ /99	8/ /99	8/ /99

G: MKORD.WPD



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

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) and its affiliate, SGT, LLC, in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, LLC, has consented to the issuance of the Confirmatory Order and waived its right to request a hearing on all or any part of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Mr. ^{MHS} ~~R.W. Borchardt~~, Director, Office of Enforcement, who can be reached at (301) 415-2741. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.
M. Reddemann, Site Vice President
Point Beach Nuclear Plant

In the Matter of
Morrison Knudsen
SGT, LLC

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EA 98-081

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple facilities licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission). MK headquarters is located in Cleveland, Ohio. SGT, LLC (SGT) is an affiliate of MK involved in the steam generator replacement projects for MK.

II

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if the former Corporate Group Welding Engineer (GWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013), OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the GWE's identification of deficiencies in welding procedures by MK and SGT employees at the Point Beach Nuclear Plant was at least a contributing factor in MK's decision to remove him from his position as MK Corporate GWE on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ), in DOL Case No. 97-ERA-34, determined that the removal of the GWE was in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation of the NRC's employee protection requirements

(10 CFR 50.7). MK retained the services of a law firm to perform an independent investigation. MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity. While MK and SGT do not agree that a violation of the Energy Reorganization Act, as amended, or the Commission's regulations occurred, in response to the DOL and OI findings, MK and SGT have agreed to take the actions as described in Section V of this Order.

III

MK, and its affiliate SGT, have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary nuclear job sites. Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training programs for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, the definition of protected activity and discrimination, and appropriate responses to the raising of safety concerns by employees. MK and SGT also agreed that such training will be conducted by an independent trainer with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK and SGT, also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this Confirmatory Order and employee protection under the Energy Reorganization Act, as amended, Section 211, and NRC Form 3, at all MK and SGT temporary nuclear job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT employee concerns program as stated in the independent third party assessment; (3) periodic updates of an employee cultural survey developed by an independent contractor to ensure that MK and SGT employees feel free to raise safety concerns without fear of retaliation; and (4) the expansion of the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to assure itself that such employees felt free to raise safety concerns while employed by MK or SGT.

IV

Since MK and SGT have committed to taking comprehensive corrective actions as set forth below, and since MK and SGT have committed to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff has determined that its concerns regarding employee protection at MK corporate headquarters and at MK and SGT temporary nuclear job sites can be resolved through confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT consented to waive any right to a hearing on this Order. MK and SGT further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT SHALL DO THE FOLLOWING:

1. MK and SGT shall hire an independent consultant to conduct audits, to review the MK and SGT Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in Condition #2 of this Order. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's ECP to be completed by January, 2000. MK and SGT shall inform the Director, Office of Enforcement as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a

safety conscious work environment exists at MK and SGT temporary nuclear job sites or explain to the Director, Office of Enforcement why it cannot implement such recommendations outlined by the consultant. MK and SGT shall provide the recommendations of the consultant to the NRC and send this information to the Director, Office of Enforcement.

2. MK and SGT will conduct mandatory continuing training programs on an annual basis for all MK and SGT supervisors and managers. All temporary craft and permanent MK and SGT employees should receive initial employee protection training as part of their access program or orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in Condition #1 of this Order, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safety conscious work environment at MK and SGT and at their temporary nuclear job sites.

3. MK and SGT will integrate, into their overall program for enhancing the work environment and safety culture at their corporate headquarters and their temporary nuclear job sites, a cultural assessment survey, i.e. questionnaire, developed by the experienced independent consultant. MK and SGT agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, e.g. that the existence of the safety concerns hotline is well known to all employees. MK and SGT also agree to conduct audits at their temporary nuclear job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT also agree to expand their exit survey to include safety conscious work environment issues and to conduct exit surveys of their permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of this Order by sending the materials to the Director, Office of Enforcement. MK and SGT will provide to the NRC information pertaining to any later actions to address issues raised by the survey and audit results.

4. Following the issuance of this Confirmatory Order, MK and SGT will issue and post this Confirmatory Order, Section 211 of the Energy Reorganization Act, as amended, and NRC Form 3, to inform all of its employees of this Confirmatory Order, as well as their right to raise safety concerns to management and to the NRC without fear of retaliation. These publications shall also be posted at all temporary nuclear job sites and at the companies' corporate headquarters.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to MK and SGT. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of September, 1999

extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST
FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER
FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of August, 1999

OGC Comment - 8/27/99

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) and its affiliate, SGT, LLC, in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, LLC, has consented to the issuance of the Confirmatory Order and waived its right to request a hearing on all or any part of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Mr. R. W. Borchardt, Director, Office of Enforcement, who can be reached at (301) 415-2741. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.
M. Reddemann, Site Vice President
Point Beach Nuclear Plant

In the Matter of
Morrison Knudsen
SGT, LLC

)
)
)

EA 98-081

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple facilities licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission). MK headquarters is located in Cleveland, Ohio. SGT, LLC (SGT) is an affiliate of MK involved in the steam generator replacement projects for MK.

II

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if the former Corporate Group Welding Engineer (GWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013), OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the GWE's identification of deficiencies in welding procedures at the Point Beach Nuclear Plant was at least a contributing factor in MK's decision to remove him from his position as GWE on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ), in DOL Case No. 97-ERA-34, determined that the removal of the GWE was in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation of the ^{NRC's} employee protection requirements ~~of the~~ (10CFR50)

INSERT1

While MK and SGT [NOTE: IN ABOVE SECTION NEED TO EXPLAIN WHY SUDDENLY WE ARE REFERENCING SGT WHEN SO FAR WE'VE JUST REFERENCED MK AS THE RESPONSIBLE ENTITY] do not agree that a violation of the ERA or the Commission's regulations occurred, in response to the DOL and OI findings, MK and SGT have agreed to take certain actions. These actions are described in Section V of this Order.

Why SGT? What is their relation to OIG?

regulations. MK retained the services of a law firm to perform an independent investigation. MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity.

III

Repetitive of Section 10 Replace with Insert

MK, and its affiliate SGT, have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary job sites. Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training programs for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, the definition of protected activity and discrimination, and appropriate responses to the raising of safety concerns by employees. MK and SGT also agreed that such training will be conducted by an independent trainer with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK and SGT, also also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this Confirmatory Order and employee protection under the Energy Reorganization Act, as amended, Section 211, and NRC Form 3, at all MK and SGT temporary job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT, Inc. employee concerns program as stated in the independent third party assessment; (3) periodic updates of an employee cultural survey developed by an

independent contractor to ensure that MK and SGT employees feel free to raise safety concerns without fear of retaliation; and (4) the expansion of the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to assure itself that such employees felt free to raise safety concerns while employed by MK or SGT.

IV

set forth below

Since MK and SGT have committed to taking the corrective actions ~~as outlined above~~, and since MK and SGT have committed to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff has determined that its concerns regarding employee protection at MK corporate headquarters and MK and SGT temporary job sites can be resolved through confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT consented to waive any right to a hearing on this Order. MK and SGT further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments the public ^{health} ~~health~~ and safety are reasonably assured, ~~and that the employee protection programs will be enhanced.~~ In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT SHALL DO THE FOLLOWING:

1. MK and SGT will integrate into ^{their} ~~its~~ overall program for enhancing the work environment and safety culture at ^{their} ~~its~~ corporate headquarters and temporary job sites a cultural assessment, as described in the NRC's letter to Mr. Patrick Hickey dated July 9, 1999.

2. MK and SGT agree to hire an independent consultant to conduct audits, to review the MK and SGT Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in ^{of this Order} ~~Condition #3~~. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's ~~entire~~ ECP to be completed by January, 2000. MK and SGT shall inform the NRC as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment

Time frames for these actions?

TOO VAGUE! Describe here!

exists at MK and SGT job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT shall ~~share these~~ ^{provide to the NRC} ~~recommendations with the NRC.~~ ^{the recommendations of the consultant,}

3. MK and SGT will conduct mandatory continuing training programs on an annual basis for all MK and SGT supervisors and managers. All temporary craft and permanent MK and SGT, Inc. employees should receive initial employee protection training as part of their access program or ~~initial~~ orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in ~~Condition #2~~ ^{of this order} above, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a ~~Safety Conscious Work Environment~~ ^{SC} at MK and SGT, Inc. and at ~~the~~ ^{their} temporary job sites.

4. MK and SGT shall integrate, into ~~its~~ ^{their} overall program for enhancing the work environment and safety culture at ~~its~~ ^{their} corporate headquarters and temporary job sites, a cultural assessment

survey, i.e. questionnaire, developed by the experienced independent consultant. MK and SGT agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, e.g. that the existence of the safety concerns hotline is well known to all employees. MK and SGT also agree to conduct audits at its temporary job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT also agree to expand ^{exit} ~~its~~ exit survey to include safety conscious work environment issues and to conduct exit surveys of ^{exit} ~~its~~ permanent corporate employees and contract employees so as to assure ~~itself~~ that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of ^{this} ~~the~~ Order. MK and SGT shall provide to the NRC information pertaining to any later actions to address issues raised by the survey and audit results.

5. Following the issuance of ^{this} ~~the~~ Confirmatory Order, MK and SGT will issue and post ^{of the Energy Regulator Act} ~~company-wide publications, i.e.~~ this Confirmatory Order, ~~10 CFR~~ Section 211, and NRC Form 3, to inform all of its employees of this Confirmatory Order, as well as ^{exit} ~~employee~~ rights to raise safety concerns to ^{Management} ~~the companies~~ and to the NRC without fear of retaliation. These publications shall also be posted at all temporary job sites and at the companies' corporate headquarters.

The Regional Administrator, Region III, may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to the contractors. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from

the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of ~~August~~, 1999

September

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 JDyer, RIII
 BClayton, RIII
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 Enforcement Coordinators
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 HBell, OIG
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MStein	SCollins	DDambly	JDyer	RWBorchardt	FMiraglia
8/ /99	8/ /99	8/ /99	8/ /99	8/ /99	8/ /99

G: MKORD.WPD

Mike - these are
initial commitments
Please revise +
return for further
O&C
review

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

Thanks

(Effective
Immediately)

SUBJECT: CONFIRMATORY ORDER AND EXERCISE OF DISCRETION

Dear Mr. Zarges:

Certain

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) in order to confirm the commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent as exhibited in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not ~~issue~~ a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, Inc. has consented to the issuance of the Confirmatory Order and waived its right to request a hearing on all or any part of the Confirmatory Order.

to these commitments

For clarification of the requirements as set forth in Section V of the Order, MK is to submit to the Regional Administrator, Region III, only the materials requested in the enclosed Confirmatory Order, Section V.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalties.

Mr. Richard

Questions concerning this Order should be addressed to ~~Mr.~~ Borchardt, Director, Office of Enforcement, who can be reached at (301) 415-2741. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

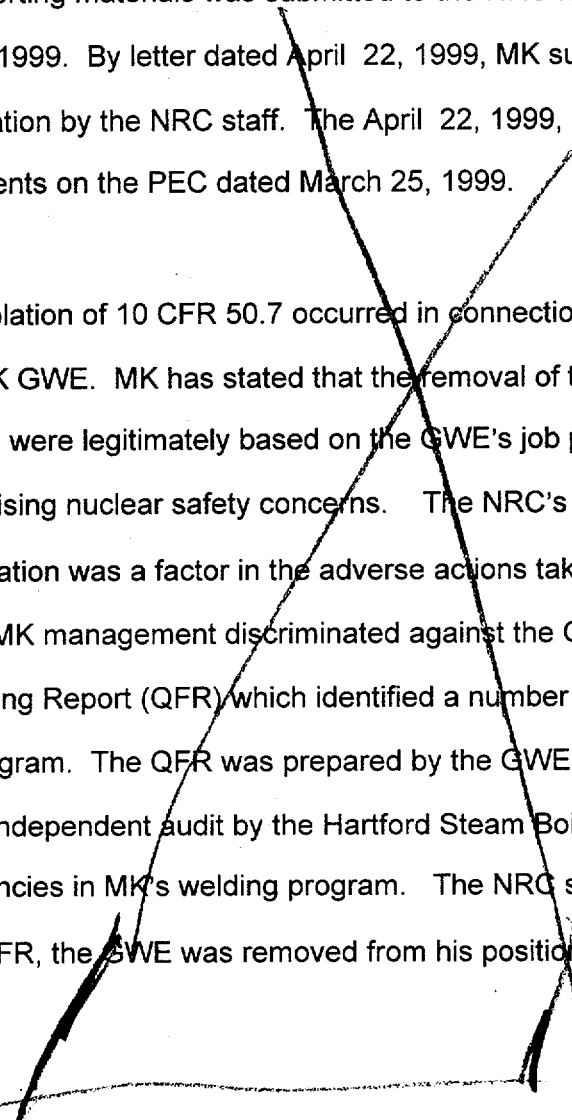
Frank Miraglia
Deputy Executive Director
For Reactor Programs

Why the
different
people?

Enclosure: Confirmatory Order (Effective Immediately)

and the report and supporting materials was submitted to the NRC for review. A PEC was held with MK on January 27, 1999. By letter dated April 22, 1999, MK submitted additional information for consideration by the NRC staff. The April 22, 1999, letter was in response to the GWE's letter and comments on the PEC dated March 25, 1999.

MK maintains that no violation of 10 CFR 50.7 occurred in connection with the removal and transfer of the former MK GWE. MK has stated that the removal of the GWE, and his transfer to its West Virginia job site, were legitimately based on the GWE's job performance, and were not based upon the GWE raising nuclear safety concerns. The NRC's Office of Investigations (OI) concluded that discrimination was a factor in the adverse actions taken against the GWE. The NRC staff believes that MK management discriminated against the GWE as a result of the GWE preparing a Quality Finding Report (QFR) which identified a number of deficiencies in the MK Point Beach welding program. The QFR was prepared by the GWE at the request of his supervisor following an independent audit by the Hartford Steam Boiler Company, which also identified several deficiencies in MK's welding program. The NRC staff believes that as a result of the submittal of the QFR, the GWE was removed from his position and transferred to an MK West Virginia job site.



Both: why: need to explain

have agreed to take certain
MK and SGT ~~has planned various additional~~ actions to assess the work environment at its corporate headquarters and temporary job sites. Specifically, MK and SGT, ~~has planned~~ to *utilize* conduct a comprehensive cultural assessment to be performed by an independent consultant and the results of such an assessment will be ~~utilized by MK and SGT, Inc.~~ *utilized* in improving ~~the~~ *their* employee concerns program, and ~~a~~ *to implement a* mandatory continuing training program, for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in ~~dealing with~~ *responding to* employees who raise safety concerns in the workplace. MK and SGT, Inc. agreed

their(?)
have committed (?)
(Literature Document)

to include in such training the requirements of 10 CFR 50.7, including, but not limited to, ~~what~~ ^{the definition of} constitutes protected activity and what ~~constitutes~~ ^{constitutes} discrimination, and appropriate responses to the raising of safety concerns by employees. ~~It was agreed~~ ^{MK and SGT have agreed} that such training ~~would~~ ^{will} be conducted by an independent trainer, ~~ie. non-MK or SGT, Inc. employee~~, with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK and SGT, Inc. also ~~plan to take~~ ^{have committed to taking} the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this confirmatory order and employee ~~whistleblower~~ ^{whistleblower} protection rights under the Energy Reorganization Act, as amended, at all MK and SGT, Inc. temporary job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT, Inc. employee concerns program as stated in the independent third party assessment; (3) periodic update of an employee cultural survey to ensure that MK and SGT, Inc. employees feel free to raise safety concerns without fear of retaliation; and (4) the expansion of the MK and SGT, Inc. exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to assure itself that such employees felt free to raise safety concerns while employed by MK or SGT, Inc.

IV

Since MK ~~reached a DOL settlement with the GWE on or about May 21, 1998~~ ^{and SGT (?)} ~~since MK has~~ ^{have} taken the corrective actions as outlined above; and since MK and SGT, ~~inc.~~ ^{have committed} has plans to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff ~~is satisfied~~ ^{has determined} that its concerns regarding employee protection at MK corporate headquarters and MK and SGT, Inc. temporary job sites can be resolved through confirmation of MK and SGT, Inc. ~~plans~~ ^{commitments} as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy

and will not pursue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT, Inc. consented to issuance of this Order with the commitments described in Section V, below. By letter dated August 9, 1999, MK and SGT, Inc. consented to waive its right to a hearing on this Order. MK and SGT, Inc. further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT, Inc. commitments, as set forth in Section V, below, are acceptable and necessary and conclude that with these commitments, ~~MK and SGT, Inc. process for addressing~~ *the public health and safety all reasonably assured.* ~~employee protection and safety concerns will be enhanced.~~ In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT, Inc. consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. Section 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY THAT MORRISON KNUDSEN AND SGT, INC. SHALL DO THE FOLLOWING:

Beginning in November, 1999, MK and SGT, Inc. will integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment, as described in the NRC's letter to Mr. Patrick Hickey dated July

? How can this be effective immediately

9, 1999. This includes the following:

1. MK and SGT, Inc. agree to hire an independent consultant to conduct audits, to review the MK and SGT, Inc. Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in condition #2. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's entire ECP to be completed by January, 2000. MK and SGT shall inform the NRC as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT, Inc. job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT, Inc. shall share these recommendations with the NRC.

2. MK and SGT will conduct mandatory continuing training programs on an annual basis for all MK and SGT, Inc. supervisors and managers. All temporary craft and permanent MK and SGT, Inc. employees should receive initial employee protection training as part of their access program or initial orientation when they begin work at an MK or SGT, Inc. job site. The independent consultant, as outlined in condition #1 above, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:
 - (A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.
 - (B) Scheduled training on building positive relationships and conflict resolution. The

training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a Safety Conscious Work Environment at MK and SGT, Inc. and at its temporary job sites.

3. MK and SGT, Inc. shall, beginning in November, 1999, integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment survey, i.e. questionnaire, developed by the experienced independent consultant. MK and SGT, Inc. also agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, e.g. that the existence of the safety concerns hotline is well known to all employees. MK and SGT, Inc. also agree to conduct audits at its temporary job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT, Inc. also agree to expand its exit survey to include safety conscious work environment issues and to conduct exit surveys of its permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of the Order. MK and SGT, Inc. shall provide to the NRC information pertaining to any later actions to address issues raised by the survey and audit results.

4. Following the issuance of the Confirmatory Order, MK and SGT, Inc. will issue company-wide publications to inform all of its employees of this Confirmatory Order, as well as employee rights to raise safety concerns to the companies and to the NRC without fear of retaliation. These publications shall also be posted at all temporary job sites and at the companies' corporate

headquarters.

The Regional Administrator, Region III, may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than ~~the above mentioned~~ ^{MR or SGT} ~~contractors~~, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to the contractors. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to

be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of August, 1999

INSERT 1

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if the former Corporate Welding Engineer (CWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013) OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the CWE's identification of deficiencies in welding procedures at the Point Beach Nuclear Power Plant was at least a contributing factor in MK's decision to remove him from his position on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ) determined that the removal of the GWE was in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation. In addition, MK retained the services of a law firm to perform an independent investigation. MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate considerations and not upon his having engaged in protected activity.

III

The NRC staff has completed its review of all of the available information, and has concluded that MK management discriminated against the GWE as the result of his having identified deficiencies in the MK Point Beach welding program. Subsequently,

TO: MIKE STEIN 8/18/99 11 PAGES
FROM: CHUCK WHEEL

MIKE, THIS IS THE
REGION III MARK-UP
OF THE DRAFT ORDER
TO MK. YOU HAVE ALL
CONCURRENCE WITH THESE
CHANGES. CHUCK

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER AND EXERCISE OF DISCRETION

Dear Mr. Zarges:

AND ITS AFFILIATE, SGT, INC.,

The enclosed Confirmatory Order is being issued to Morrison Knudsen^A (MK) in order to confirm the commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent as exhibited in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not pursue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, Inc. ~~has~~ consented to the issuance of the Confirmatory Order and waived its right to request a hearing on all or any part of the Confirmatory Order.

For clarification of the requirements as set forth in Section V of the Order, MK is to submit to the Regional Administrator, Region III, only the materials requested in the enclosed Confirmatory Order, Section V.

CHIEF,
AND THE DIRECTOR, ASSURANCE, VENDOR & CONTRACTORS AND MATERIALS
BRANCH, OFFICE OF NUCLEAR REGULATORY

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Bill Borchardt, Director, Office of Enforcement, who can be reached at (301) 415-2741. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.

M. REDDEMANN, SITE VICE PRESIDENT
POINT BEACH NUCLEAR PLANT

In the Matter of

EA 98-081

Morrison Knudsen
SGT, Inc.

)
)
)

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple licensee sites. MK headquarters is located in Cleveland, Ohio. SGT, Inc. is an affiliated corporation involved in the ~~S~~team ~~G~~enerator replacement projects for MK.

II

NRC Office of Investigations (OI) Report No. 3-97-013 concluded that discrimination occurred when MK removed the Group Welding Engineer (GWE) on January 15, 1997, and subsequently transferred him following the GWE's documentation of safety concerns on January 14, 1997. In addition, a Department of Labor (DOL) Administrative Law Judge (ALJ), on October 28, 1997, also determined after an evidentiary hearing, in 97-ERA-34, that discrimination was a factor in the removal and transfer of the GWE. The ALJ's finding was remanded to the ALJ by a DOL Administrative Review Board on May 1, 1998, based upon a Joint Motion for Settlement Approval. The ALJ issued ^A ~~his~~ decision and order approving the settlement and dismissing the complaint with prejudice on May 21, 1998.

The NRC staff invited MK to a predecisional enforcement conference (PEC) to discuss the apparent violation, which was fully detailed in correspondence with MK on March 25, 1998. An independent investigation was performed for MK by the law firm Stier, Anderson and Malone and the report and supporting materials was submitted to the NRC for review. A PEC was held

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importance of maintaining a safety conscious work environment and of assisting managers and supervisors in dealing with employees who raise safety concerns in the workplace. MK and SGT, Inc. agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. It was agreed that such training would be conducted by an independent trainer, i.e. non-MK or SGT, Inc. employee, with expertise in employee concerns programs and employee protection requirements in the nuclear POWER industry.

In addition, MK and SGT, Inc. also plan to take the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this confirmatory order and employee whistleblower protection rights under the Energy Reorganization Act, as amended, at all MK and SGT, Inc. temporary job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT, Inc. employee concerns program as stated in the independent third party assessment; (3) periodic update of an employee cultural survey to ensure that MK and SGT, Inc. employees feel free to raise safety concerns without fear of retaliation; and (4) the expansion of the MK and SGT, Inc. exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to assure itself that such employees felt free to raise safety concerns while employed by MK or SGT, Inc.

IV

Since MK reached a DOL settlement with the GWE on or about May 21, 1998; since MK has AGREED TO TAKE action the corrective actions ■ outlined above; and since MK and SGT, Inc. has plans to

monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff is satisfied that its concerns regarding employee protection at MK corporate headquarters and MK and SGT, Inc. temporary job sites can be resolved through confirmation of MK and SGT, Inc. plans as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not pursue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT, Inc. consented to issuance of this Order with the commitments described in Section V, below. By letter dated August 9, 1999, MK and SGT, Inc. consented to waive its right to a hearing on this Order. MK and SGT, Inc. further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT, Inc. commitments, as set forth in Section V, below, are acceptable and necessary and conclude that with these commitments, MK and SGT, Inc. process for addressing employee protection and safety concerns will be enhanced. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT, Inc. consent, this Order is immediately effective upon issuance.

5

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. Section 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT, INC. SHALL DO THE FOLLOWING:

Beginning in November, 1999, MK and SGT, Inc. will integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment, as described in the NRC's letter to Mr. Patrick Hickey dated July 9, 1999. This includes the following:

1. MK and SGT, Inc. agree to hire an independent consultant to conduct audits, to review the MK and SGT, Inc. Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in condition ~~1~~². MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's entire ECP to be completed by January, 2000. MK and SGT shall inform the NRC as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT, Inc. job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT, Inc. shall share these recommendations with the NRC.
2. MK and SGT will conduct mandatory continuing training programs on an annual basis for all MK and SGT, Inc. supervisors and managers. All temporary craft and permanent MK and SGT,

of the safety concerns hotline is well known to all employees. MK and SGT, Inc. also agree to conduct audits at its temporary job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT, Inc. also agree to expand its exit survey to include safety conscious work environment issues and to conduct exit surveys of its permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of the Order. MK and SGT, Inc. shall provide to the NRC information pertaining to any later actions to address issues raised by the survey and audit results.

4. Following the issuance of the Confirmatory Order, MK and SGT, Inc. will issue company-wide publications to inform all of its employees of this Confirmatory Order, as well as employee rights to raise safety concerns to the companies and to the NRC without fear of retaliation. These publications shall also be posted at all temporary job sites and at the companies' corporate headquarters.

The Regional Administrator, Region III, may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

8

VI

Any person adversely affected by this Confirmatory Order, other than the above mentioned

~~contractors~~
EMITTES

may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to the contractors. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a

hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of August, 1999

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*Final Region III Comments
Region III concurre 9/15/99*

OPTIONAL FORM 101 (7-90)

FAX TRANSMITTAL

of pages **11**

To: MIKE STEIN	From: CHUCK WELZ
Dept./Agency	Phone #
Fax #	Fax #

EA 98-081

Mr. Thomas H. Zarges
 President and CEO
 Morrison Knudsen Corporation
 MK Ferguson Plaza
 1500 West Third Street
 Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) and its affiliate, SGT, LLC, (SGT) in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, LLC, have consented to the issuance of the Confirmatory Order and waived their right to request a hearing on all or any part of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Mr. Michael Stein, Office of Enforcement, who can be reached at (301) 415-1688. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia
 Deputy Executive Director
 For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.
 M. Reddemann, Site Vice President
 Point Beach Nuclear Plant

MIKE, CONSIDERING THAT MK IS AT YUCCA MOUNTAIN AND OTHER NMSS PROJECTS, I DON'T KNOW IF "LICENSED" IS A CORRECT OR ENCOMPASSING WORD. I'M THINKING ABOUT THE GDPs. THEY HOLD A CERTIFICATE UNITED STATES RATHER THAN A LICENSE.
 NUCLEAR REGULATORY COMMISSION

CHUCK

In the Matter of)
)
 Morrison Knudsen)
 SGT, LLC)

EA 98-081

CONFIRMATORY ORDER
 (EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple reactor and nuclear materials facilities ^{REGULATED} licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission). MK headquarters is located in Cleveland, Ohio. SGT, LLC (SGT) is an affiliate of MK involved in the steam generator replacement projects for MK.

II

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if the former Corporate Group Welding Engineer (GWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013), OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the GWE's identification of deficiencies in welding procedures by MK and SGT employees at the Point Beach Nuclear Plant was at least a contributing factor in MK's decision to remove him from his position as MK Corporate GWE on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ), in DOL Case No. 97-ERA-34, determined that the removal of the GWE was in retaliation for his engaging in protected

activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation of the NRC's employee protection requirements (10 CFR 50.7). MK retained the services of a law firm to perform an independent investigation. MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity. While MK and SGT do not agree that a violation of the Energy Reorganization Act, as amended, or the Commission's regulations occurred, in response to the DOL and OI findings, MK and SGT have agreed to take the actions as described in Section V of this Order.

III

MK, and its affiliate SGT,¹ have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary nuclear reactor and materials job sites.

Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training program for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in

¹SGT performs the steam generator replacement work for MK and SGT employees were involved in the discrimination against the MK Corporate Group Welding Engineer.

BOTH MK AND SGT

the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, the definition of protected activity and discrimination, and appropriate responses to the raising of safety concerns by employees. MK and SGT also agreed that such training will be conducted by an independent trainer with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK and SGT, also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this Confirmatory Order and ^{THE} employee protection ^{PROVISIONS OF} ~~under~~ the Energy Reorganization Act, as amended, Section 211, and NRC Form 3, at all MK and SGT temporary nuclear reactor and materials job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT employee concerns program as stated in the independent third party assessment; (3) periodic updates of an employee cultural survey developed by an independent contractor to ensure that MK and SGT employees feel free to raise safety concerns without fear of retaliation; and (4) the expansion of the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to ensure that such employees feel free to raise safety concerns while employed by MK or SGT.

IV

Since MK and SGT have committed to taking comprehensive corrective actions as set forth below, and since MK and SGT have committed to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff

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has determined that its concerns regarding employee protection at MK corporate headquarters and at MK and SGT temporary nuclear reactor and materials job sites can be resolved through NRC's confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT consented to waive any right to a hearing on this Order. MK and SGT further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above, and MK and SGT's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT, LLC, SHALL DO THE FOLLOWING:

1. MK and SGT shall hire an independent consultant to conduct audits, to review the MK and SGT Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in Condition #2 of this Order. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's ECP to be completed by March, 2000. MK and SGT shall inform the NRC by November 1, 1999, as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT corporate and temporary nuclear reactor and materials job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT shall provide the report of recommendations of their independent consultant to the NRC Branch Chief, Quality Assurance, Vendor Inspection, Maintenance and Allegations Branch, Office of Nuclear Reactor Regulation at U.S. NRC, Mailstop O-9A1, Washington DC 20555.

2. MK and SGT will conduct mandatory continuing training programs on an annual basis beginning in the calendar year 2000 for all MK and SGT supervisors and managers at their corporate and temporary nuclear reactor and materials job sites. All temporary craft and permanent MK and SGT employees shall receive initial employee protection training as part of their access program or orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in Condition #1 of this Order, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

6

OR SIMILAR REGULATIONS,

(A) Annual training on the requirements of 10 CFR 50.7, [^]through at least calendar-year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safety conscious work environment at MK and SGT and at their temporary nuclear reactor and materials job sites.

3. MK and SGT will integrate, into their overall program for enhancing the work environment and safety culture at their corporate headquarters and their temporary nuclear reactor and materials job sites, a cultural assessment survey (i.e. questionnaire) developed by the independent consultant. The time frame for integration of cultural assessments into the ECP shall be submitted, to the NRC Branch Chief mentioned in Condition #1 of this Order, by the MK and SGT independent consultant. MK and SGT agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, [^]OR SIMILAR REGULATIONS, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP (e.g. that the existence of the safety concerns hotline is well known to all employees). MK and SGT also agree to conduct audits at their temporary nuclear reactor and materials job sites soon after the initial staffing of the sites and periodically afterwards as warranted. Lastly, MK and SGT also agree to expand their exit survey to include safety conscious work environment issues and to conduct exit surveys of

7

their permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys, and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of this Order by sending the materials to the NRC contact stated in Condition #1 of this Order. MK and SGT will provide information to the NRC pertaining to any follow-up actions to address issues raised by the survey and audit results.

4. Following the issuance of this Confirmatory Order, MK and SGT will issue and post this Confirmatory Order, Section 211 of the Energy Reorganization Act, as amended, and NRC Form 3, to inform all of its employees of this Confirmatory Order, as well as their right to raise safety concerns to management and to the NRC without fear of retaliation. These publications shall also be posted at all temporary nuclear reactor and materials job sites and at the companies' corporate headquarters.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by MK and SGT of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to MK and SGT. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of September, 1999

Distribution
 NUDOCS
 PDR
 SECY
 CA
 WTravers, EDO
 FMiraglia, DEDR
 BBorchardt, OE
 JDyer, RIII
 BClayton, RIII
 SCollins, NRR
 DDambly, OGC
 Enforcement Coordinators
 RI, RII, RIV
 MStein, OE
 GCaputo, OI
 HBell, OIG
 EA File

OE	NRR	OGC	RIII	OE:D	DEDR
MStein	SCollins	DDambly	JDyer	RWBorchardt	FMiraglia
9/ /99	9/ /99	9/ /99	9/ /99	9/ /99	9/ /99

G: MKORD.WPD

Comments
from OGC
9/15/99

CHIDAKEL

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) and its affiliate, SGT, LLC, in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, LLC, have consented to the issuance of the Confirmatory Order and waived their right to request a hearing on all or any part of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Mr. Michael Stein, Office of Enforcement, who can be reached at (301) 415-1688. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.
M. Reddemann, Site Vice President

Point Beach Nuclear Plant

In the Matter of)	EA 98-081
)	
Morrison Knudsen)	
SGT, LLC)	

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple facilities licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission). MK headquarters is located in Cleveland, Ohio. SGT, LLC (SGT) is an affiliate of MK involved in the steam generator replacement projects for MK.

II

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if ~~the~~ former Corporate Group Welding Engineer (GWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013), OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the GWE's identification of deficiencies in welding procedures by MK and SGT employees at the Point Beach Nuclear Plant was at least a contributing factor in MK's decision to remove him from his position as MK Corporate GWE on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ), in DOL Case No. 97-ERA-34, determined that the removal of the GWE was in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the

NRC staff to discuss the apparent violation of the NRC's employee protection requirements (10 CFR 50.7). MK retained the services of a law firm to perform an independent investigation. MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity. While MK and SGT do not agree that a violation of the Energy Reorganization Act, as amended, or the Commission's regulations occurred, in response to the DOL and OI findings, MK and SGT have agreed to take the actions as described in Section V of this Order.

Have footnote

III

① MK, and its affiliate SGT, have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary nuclear job sites. Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training program for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, the definition of protected activity and discrimination, and appropriate responses to the raising of safety concerns by employees. MK and SGT also agreed that such training will be conducted by an independent trainer with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

See in already stated on p. 1.

¹SGT performs the steam generator replacement work for MK and SGT employees were involved in the discrimination against the MK Corporate Group Welding Engineer.

In addition, MK and SGT, also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this Confirmatory Order and ^{the} ~~employee protection~~ ^{requirements of} ~~under~~ ^{section 211 of} the Energy Reorganization Act, as amended, ~~Section 211~~, and NRC Form 3, at all MK and SGT temporary nuclear job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) ^{implementing} ~~implementation~~ of the recommendations ^{of the} ~~in the~~ independent third party assessment to improve the MK and SGT employee concerns program ^{conducting} ~~as stated in the~~ independent third party assessment; (3) periodic updates of an employee cultural survey developed by an independent contractor to ensure that MK and SGT employees feel free to raise safety concerns without fear of retaliation; and (4) ^{expanding} ~~the expansion~~ of the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct ^{exit} ~~such~~ surveys ^{of their} ~~among the~~ permanent and contract employees to assure ^{that} ~~itself~~ that such employees felt free to raise safety concerns while employed by MK or SGT.

of the independent third party assessment
could way of stating this - do they have an exit interview process which will be expanded on so they start to see this

IV

Since MK and SGT have committed to taking comprehensive corrective actions as set forth below, and since MK and SGT have committed to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff has determined that its concerns regarding employee protection at MK corporate headquarters and at MK and SGT temporary nuclear job sites can be resolved through confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case.

SP?

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT

~~consented to waive any right to a hearing on this Order.~~ MK and SGT further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT ^{LLC,} SHALL DO THE FOLLOWING:

What's the substantive difference between 1 and 2?

1. MK and SGT shall hire an independent consultant to conduct audits, to review the MK and SGT Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in Condition #2 of this Order. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's ECP to be completed by March, 2000. MK and SGT shall inform the NRC by November 1, 1999 as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT corporate and temporary nuclear job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT shall provide the report of recommendations of their independent consultant to the NRC and send all information to the NRC Branch Chief, QA, Vendor Inspection, Maintenance and Allegations Branch, Office of Nuclear Reactor Regulation.

Still no time to get staff here

2. MK and SGT will conduct mandatory continuing training programs on an annual basis beginning in the year 2000 calendar year for all MK and SGT supervisors and managers at their corporate and temporary nuclear job sites. All temporary craft and permanent MK and SGT employees shall receive initial employee protection training as part of their access program or orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in Condition #1 of this Order, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safety conscious work environment at MK and SGT and at their temporary nuclear job sites.

3. MK and SGT will integrate, into their overall program for enhancing the work environment and safety culture at their corporate headquarters and their temporary nuclear job sites, a cultural assessment survey, i.e. questionnaire, developed by the experienced independent consultant. The time frame for integration of cultural assessments into the ECP shall be submitted to the NRC by the MK and SGT independent consultant. MK and SGT agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, e.g.

that the existence of the safety concerns hotline is well known to all employees. MK and SGT also agree to conduct audits at their temporary nuclear job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT also agree to expand their exit survey to include safety conscious work environment issues and to conduct exit surveys of their permanent corporate employees and contract employees so as to assure ~~themselves~~ ^{How do I say} that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of this Order by sending the materials to the NRC Office stated in Condition #1 of this Order. MK and SGT will provide to the NRC information pertaining to any later actions to address issues raised by the survey and audit results.

4. Following the issuance of this Confirmatory Order, MK and SGT will issue and post this Confirmatory Order, Section 211 of the Energy Reorganization Act, as amended, and NRC Form 3, to inform all of its employees of this Confirmatory Order, as well as their right to raise safety concerns to management and to the NRC without fear of retaliation. These publications shall also be posted at all temporary nuclear job sites and at the companies' corporate headquarters.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made

in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to MK and SGT. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of September, 1999

in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation of the NRC's employee protection requirements (10 CFR 50.7). MK retained the services of a law firm to perform an independent investigation. MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity. While MK and SGT¹ do not agree that a violation of the Energy Reorganization Act, as amended, or the Commission's regulations occurred, in response to the DOL and OI findings, MK and SGT have agreed to take the actions as described in Section V of this Order.

III

MK, and its affiliate SGT, have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary nuclear reactor and materials job sites. Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training program for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7,

¹Both MK and SGT employees were involved in the ^{alleged} discrimination against the MK Corporate Group Welding Engineer.

Distribution:

Concurrence:

<i>M.S.</i> OE	OGC	Region III	OE
MStein	SChidakel	JDyer	JLieberman
7/ 1 /99	7/ /99	7/ /99	7/ /99

G:\hicklett.wpd

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a Safety Conscious Work Environment at MK and SGT and at its temporary job sites.

3. MK and SGT shall, beginning in September, 1999, integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment survey, i.e. questionnaire, developed by the experienced independent consultant. MK and SGT also agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, e.g. that the existence of the safety concerns hotline is well known to all employees. MK and SGT also agree to conduct audits at its temporary job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT also agree to expand its exit survey to include safety conscious work environment issues and to conduct exit surveys of its permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of the Order. MK and SGT shall provide to the NRC any ~~plans necessary~~ *any steps plan/* *later actions to be* to address issues raised by the survey and audit results.

4. Following the issuance of the Confirmatory Order, MK and SGT will issue company-wide publications to inform all of its employees of this Confirmatory Order, as well as employee rights to raise safety concerns to the companies and to the NRC without fear of retaliation. These publications shall also be posted at all temporary job sites and at the companies' corporate headquarters.

Please inform us whether MK and SGT will consent to a Confirmatory Order with the above outlined conditions. In addition we would appreciate both MK and SGT waivers of their right to a hearing on this Confirmatory Order and signature on the enclosed Hearing Waiver forms. If you agree to these conditions we will begin to prepare the Order.

Should you have any questions or wish to schedule another meeting to discuss the above provisions, please call Michael Stein of my staff at (301) 415-1688.

Sincerely,

James Lieberman, Director
Office of Enforcement

Enclosure: Hearing Waiver Forms

EA 98-091

OFFICE OF ENFORCEMENT
HEADQUARTERS TRAVELER

ES MHS

REGION III SENT DATE _____ RECEIVED _____

LICENSEE M. Kristin Knudsen

FACILITY Cleveland, Ohio

- Prepared by
OE Specialist

Sent to Region III
on 8/17/99
Brent Christensen
w/

PROGRAM OFFICE NRA - sent to Veronica Diaz on 8/17/99 COMMENTS RECEIVED ON 8/23/99 Questions

COMMENTS: NRA Concurrence / Questions
Re-sent to NRA - 9/13/99 - 9/14/99

OGC REVIEWER Susan Chudakel - Sent on 8/17/99 - Comments 9/14/99 COMMENTS RECEIVED ON 8/19/99

COMMENTS: Multiple Comments - incorporated into document

OGC CONCURRENCE REQUIRED (YES) NO

SENT TO OGC 8/23/99 REDRAFTS SENT 8/23/99, 9/13/99, 9/14/99

NO LEGAL OBJECTION BY S. Chudakel DATE 9/15/99

COMMENTS: Incorporated OGC Comments on 9/16/99

ENFORCEMENT SPECIALIST CONCURRED ON 8/23/99 9/3/99 / 9/13/99 / 9/14/99

SENT TO DEPUTY DIRECTOR/DIRECTOR ON 8/23/99 9/3/99

INITIAL DEPUTY DIRECTOR CONCURRENCE ON 9/15/99 To CE Director

INITIAL DIRECTOR CONCURRENCE ON _____ on 9/16/99

SENT TO REGION 8/23/99 / 9/13/99 / 9/14/99 ON 9 CCO/CLC

CONCURRED ON BY Christine ON 9/14/99 - Add'l Comments 9/16/99

SENT TO DIRECTOR, OE ON 8/23/99 CONCURRED ON 9/12/99 <

SENT TO DEPUTY EXECUTIVE DIRECTOR ON _____

REDRAFT ON _____

REDRAFT ON _____

CONCURRED ON _____

COMMENTS _____

SENT TO COMMISSION ON _____

SECY PAPER ON _____

SRM DATE ON _____

SENT TO REGION TO ISSUE ON _____ ISSUED ON _____

REGIONAL TIMELINESS EXCEPTED YES NO APPROVED BY _____

OE TIMELINESS EXCEPTED YES NO APPROVED BY _____

IF YES WHY _____

GREATER THAN 3 WEEKS: WHY _____

Patrick Hickey of Show Pittman (MHC Atty)
confirming the order of one minor editorial change to RUM#1
(9/1/99)

10

From: Michael Stein
To: Brent Clayton, Charles Weil, Susan Chidakel, Vo...
Subject: MK Order

Thanks to Chuck Weil of Region III and Susan Chidakel of OGC, I have modified the MK Order for clarification.

Ordering clauses 1 and 2 do apply to all MK and SGT employees in corporate as well as temporary nuclear jobsites.

Footnote #1 explains that SGT does the steam generator changeout for MK and that SGT employees were involved in the discrimination against the GWE.

I changed some of the timing-Region III suggests six months so they need to do an assessment by March 2000-they need to tell us who their independent consultant is by the end of November 1999-they need to factor annual training into the 2000 calendar year and they need to tell us when their cultural assessments will begin.

The attached MK Order contains the Region III and OGC comments.

Thanks to all,

Mike

CC: Dennis Dambly, Jim Dyer, Richard Borchardt

DB

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

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Sincerely,

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.
M. Reddemann, Site Vice President
Point Beach Nuclear Plant

In the Matter of) EA 98-081
)
Morrison Knudsen)
SGT, LLC)

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

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In addition, MK and SGT, also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting

¹SGT performs the steam generator replacement work for MK and SGT employees were involved in the discrimination against the MK Corporate Group Welding Engineer.

this Confirmatory Order and employee protection under the Energy Reorganization Act, as amended, Section 211, and NRC Form 3, at all MK and SGT temporary nuclear job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT employee concerns program as stated in the independent third party assessment; (3) periodic updates of an employee cultural survey developed by an independent contractor to ensure that MK and SGT employees feel free to raise safety concerns without fear of retaliation; and (4) the expansion of the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to assure itself that such employees felt free to raise safety concerns while employed by MK or SGT.

IV

Since MK and SGT have committed to taking comprehensive corrective actions as set forth below, and since MK and SGT have committed to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff has determined that its concerns regarding employee protection at MK corporate headquarters and at MK and SGT temporary nuclear job sites can be resolved through confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT consented to waive any right to a hearing on this Order. MK and SGT further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT SHALL DO THE FOLLOWING:

1. MK and SGT shall hire an independent consultant to conduct audits, to review the MK and SGT Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in Condition #2 of this Order. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's ECP to be completed by March, 2000. MK and SGT shall inform the NRC by November 1, 1999 as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT corporate and temporary nuclear job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT shall provide the report of recommendations of their independent consultant to the NRC and send all information to the NRC Branch Chief, QA, Vendor Inspection, Maintenance and Allegations Branch, Office of Nuclear Reactor Regulation.
2. MK and SGT will conduct mandatory continuing training programs on an annual basis beginning in the year 2000 calendar year for all MK and SGT supervisors and managers at their

corporate and temporary nuclear job sites. All temporary craft and permanent MK and SGT employees shall receive initial employee protection training as part of their access program or orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in Condition #1 of this Order, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safety conscious work environment at MK and SGT and at their temporary nuclear job sites.

3. MK and SGT will integrate, into their overall program for enhancing the work environment and safety culture at their corporate headquarters and their temporary nuclear job sites, a cultural assessment survey, i.e. questionnaire, developed by the experienced independent consultant. The time frame for integration of cultural assessments into the ECP shall be submitted to the NRC by the MK and SGT independent consultant. MK and SGT agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, e.g. that the existence of the safety concerns hotline is well known to all employees. MK and SGT also agree to conduct audits at their temporary nuclear job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT also agree to

expand their exit survey to include safety conscious work environment issues and to conduct exit surveys of their permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of this Order by sending the materials to the NRC Office stated in Condition #1 of this Order. MK and SGT will provide to the NRC information pertaining to any later actions to address issues raised by the survey and audit results.

4. Following the issuance of this Confirmatory Order, MK and SGT will issue and post this Confirmatory Order, Section 211 of the Energy Reorganization Act, as amended, and NRC Form 3, to inform all of its employees of this Confirmatory Order, as well as their right to raise safety concerns to management and to the NRC without fear of retaliation. These publications shall also be posted at all temporary nuclear job sites and at the companies' corporate headquarters.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN:

Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to MK and SGT. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of September, 1999

Distribution
 NUDOCS
 PDR
 SECY
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 WTravers, EDO
 FMiraglia, DEDR
 BBorchardt, OE
 JDyer, RIII
 BClayton, RIII
 SCollins, NRR
 DDambly, OGC
 Enforcement Coordinators
 RI, RII, RIV
 MStein, OE
 GCaputo, OI
 HBell, OIG
 EA File

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17

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

Mr. J. Patrick Hickey, P.C.
Shaw Pittman Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

Dear Mr. Hickey:

On June 21, 1999, we met to discuss a confirmatory order to resolve the issues arising out of the alleged discrimination matter pertaining to Morrison Knudsen (MK), EA 98-081. We discussed various corrective and remedial actions which MK could implement in order to improve its safety conscious work environment and to resolve NRC staff concerns related to the removal and transfer of the Group Welding Engineer at issue in EA 98-081. Based on our conversation we propose the following conditions:

1. MK agrees to hire an independent consultant to conduct audits, to review the MK Employees Concerns Program, and to conduct training for MK and SGT, Inc. supervisors and managers as discussed in the other conditions. MK will hire this independent consultant with experience in employee concerns program to also conduct an independent evaluation of MK's entire ECP to be completed by January, 2000. MK shall inform the NRC as to the identity of its independent consultant. MK shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK or explain to the NRC why it cannot implement such recommendations outlined by the MK consultant. MK will share these recommendations with the NRC.

2. MK will conduct mandatory continuing training programs on an annual basis for all MK and SGT, Inc. supervisors and managers. All temporary craft and permanent MK employees should receive initial whistleblower protection training as part of their access program or initial orientation when they begin work at MK. The MK independent consultant, as outlined in paragraph #1 above, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the MK independent consultant, if the consultant does not conduct such training, and include:

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B/4

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3. MK will, beginning in September, 1999, integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment survey, i.e. questionnaire, developed by the experienced MK independent consultant. The questionnaire and the results of the survey will be submitted to the Regional Administrator, Region III. MK also agrees to conduct at least three additional annual assessments, and submit the results to the NRC. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement MK's Employees Concerns Program, i.e. the existence of the MK safety hotline is well known to MK employees. MK agrees to conduct audits at its temporary job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK agrees to expand its exit survey to include safety conscious work environment issues and to exit with permanent corporate employees and contract employees to assure itself that all MK employees feel free to raise safety concerns without fear of retaliation.

4. MK will issue a company wide publication to inform all of its employees of this Confirmatory Order, as well as MK employee rights to raise safety concerns to MK and the NRC without fear of retaliation. This publication shall also be posted at all MK temporary job sites and at MK corporate headquarters.

Please inform us whether MK will consent to a confirmatory order with the above outlined conditions. In addition we would appreciate MK's waiver of its right to a hearing on this Confirmatory Order and signature on the enclosed Hearing Waiver form. If you agree to these conditions we will begin to prepare the Order.

Should you have any questions or wish to schedule another meeting to discuss the above provisions, please call Michael Stein of my staff at (301) 415-1688.

Sincerely,

James Lieberman, Director
Office of Enforcement

Enclosure: Hearing Waiver Form

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Office of Enforcement

Enclosure: Hearing Waiver Form

Concurrence:

OE <i>M.S.</i>	OGC	Region III	OE
MStein	SChidakel	JDyer	JLieberman
6/28/99	6/ /99	7/ /99	7/ /99

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HEARING WAIVER FORM

Morrison Knudsen (MK) hereby agrees to comply with the commitments described in this letter and agrees to incorporating the commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, MK consents to the issuance of the Confirmatory Order, Effective Immediately with the commitments described on pages 1 and 2 of this letter and, by doing so, pursuant to 10 CFR 2.202(a)(3), MK will not have a right to request a hearing on all or any part of the Order.

Thomas H. Zarges, President and CEO
Morrison Knudsen Corporation

Date



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

Mr. J. Patrick Hickey, P.C.
Shaw Pittman Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

Dear Mr. Hickey:

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The consultant will appear to be funny

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Office of Enforcement

Enclosure: Hearing Waiver Form

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James Lieberman, Director
Office of Enforcement

Enclosure: Hearing Waiver Form

Concurrence:

OE <i>m.s.</i>	OGC	Region III	OE
MStein	SChidakel	JDyer	JLieberman
6/25/99	6/ /99	7/ /99	7/ /99

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These comments reflect my J.L. comments. B

=> per reasonable work conditions

we agree to hire independent consultant to conduct review - training as discussed below

Mr. J. Patrick Hickey, P.C.
Shaw Pittman Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

Dear Mr. Hickey:

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Based on our conversation we propose the following conditions

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B. Audit of Permanent and Temporary Craft Employees

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C. Independent Evaluation of Employees Concerns Program and adoption of recommendations from the Evaluation

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Please submit your response to the above ~~requests~~ as soon as possible. In addition we would appreciate MK's consent to the issuance of the confirmatory order with the above provisions, as well as MK's waiver of its right to a hearing on this Order.

If you agree we will prepare a final order.
Should you have any questions or wish to schedule another meeting to discuss the above provisions, please call Michael Stein of my staff at (301) 415-1688.

Sincerely,

James Lieberman, Director
Office of Enforcement

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Please inform me whether MK will proceed to issue with the above conditions

Waiver sheet

Conc:

OGC RTH CE

Mr. J. Patrick Hickey, P.C.
Shaw Pittman Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

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Office of Enforcement

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Thank you for your interest in achieving....

Sincerely,

James Lieberman, Director
Office of Enforcement

G:\hicklett.wpd

JCC Comments

Mr. J. Patrick Hickey, P.C.
Shaw Pittman Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

Dear Mr. Hickey:

THIS IS JAGUE -
IF QUESTION THE USE
OF THE NRC EAH
rather than reference
to DOL
Case.

On June 21, 1999, we met to discuss a ~~confirmatory~~ order to resolve the issues arising out of the alleged discrimination matter pertaining to Morrison Knudsen (MK) EA 98-081. We discussed various corrective and remedial actions which MK could implement in order to improve its safety conscious work environment and to resolve NRC staff concerns related to the removal and transfer of the Group Welding Engineer at issue in EA 98-081. Based on our conversation we propose the following conditions ~~be incorporated into the Order~~.

SWER

1. MK agrees to hire an independent consultant to conduct audits, to review the MK Employees Concerns Program, and to conduct training for MK and SGT, Inc. supervisors and managers as discussed in the other conditions. MK will hire this independent consultant with experience in employee concerns program to also conduct an independent evaluation of MK's entire ECP to be completed by January, 2000. MK shall inform the NRC as to the identity of its independent consultant. MK shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK or explain to the NRC why it cannot implement such recommendations outlined by the MK consultant. MK will share these recommendations with the NRC.

in paragraph 1

2. MK will conduct mandatory continuing training programs on an annual basis for all MK and SGT, Inc. supervisors and managers. All temporary craft and permanent MK employees should receive initial whistleblower protection training as part of their access program or initial orientation when they begin work at MK. The MK independent consultant, as outlined in paragraph #1 above, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the MK independent consultant, if the consultant does not conduct such training, and include:

?
Poor
100%

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a Safety Conscious Work Environment at MK and at its

temporary job sites.

3. MK will, beginning in September, 1999, integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment survey, i.e. questionnaire, developed by the experienced MK independent consultant. The questionnaire and the results of the survey will be submitted to the Regional Administrator, Region III. MK also agrees to conduct at least three additional annual assessments, and submit the results to the NRC. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement MK's Employees Concerns Program, ~~i.e. the existence of the MK safety hotline is well known to MK employees.~~ MK agrees to conduct audits at its temporary job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK agrees to expand its exit survey to include safety conscious work environment issues ~~and to deal with permanent corporate employees and contract employees~~ to assure itself that all MK employees feel free to raise safety concerns without fear of retaliation. 50 25

4. ~~Following issuance of the Confirmatory Order,~~ MK will issue a company-wide publication to inform all of its employees of this Confirmatory Order, as well as MK employee rights to raise safety concerns to MK and the NRC without fear of retaliation. This publication shall also be posted at all MK temporary job sites and at MK corporate headquarters. X

Please inform us whether MK will consent to a confirmatory order with the above outlined conditions. In addition we would appreciate MK's waiver of its right to a hearing on this Confirmatory Order and signature on the enclosed Hearing Waiver form. If you agree to these conditions we will begin to prepare the Order.

Should you have any questions or wish to schedule another meeting to discuss the above provisions, please call Michael Stein of my staff at (301) 415-1688.

Sincerely,

James Lieberman, Director
Office of Enforcement

Enclosure: Hearing Waiver Form

the work place in the context of a Safety Conscious Work Environment at MK and at its temporary job sites.

Modify license

Incorporation of this

modify order (?)

HEARING WAIVER FORM

Morrison Knudsen (MK) hereby agrees to comply with the commitments described in this letter and agrees to ~~incorporating the~~ commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, MK consents to the issuance of the Confirmatory Order, Effective Immediately, with the commitments described on pages 1 and 2 of this letter and, by doing so, pursuant to 10 CFR 2.202(a)(3) MK will ~~not have a~~ right to request a hearing on all or any part of the Order.

waives the

and (d)?

Thomas H. Zarges, President and CEO
Morrison Knudsen Corporation

Date

INSERT

On June 21, 1999, we met to discuss a Confirmatory Order which the NRC intends to issue to Morrison Knudsen (MK). The Order is being issued to resolve certain matters in connection with the removal and transfer of a former M.K. Group Welding Engineer (GWE) after the GWE raised certain nuclear safety concerns. A U.S. Department of Labor (DOL) Administrative Law Judge (ALJ) determined that this action by MK constituted discrimination in violation of Section 211 of the Energy Reorganization Act (ERA)(Case No. 97-ERA-34). During our meeting, we

Artoyes

- Artoyes alleged poor performance
- "remuneration not to conduct "drop" testing.

Performance - 1995 was rated excellent - 20 highest
1996 - " effectives 31 highest

Walcott - communication-related issues only reason to transfer
Artoyes, but no reference in 1996 performance
review, dated only 23 days before pre-
tested activity.

B/S

Morrison Knudsen

Options

1. Hold conference soon

Pros - Fairly timely enforcement action in response to discrimination issue

Cons - May take action (or no action) without all the evidence

2. Hold conference (if deemed necessary) after reviewing SAM report (issue ~Aug)

Pros - Will have more information on which to make enforcement decision

Cons - Individuals' memories fade
Less timely enforcement action

3. Wait for Secretary of Labor decision to determine if conference needed
(Assuming DOL finds discrimination occurred, hold conference only if we think individual actions are appropriate. Otherwise, issue NOV to M-K with no conference if we agree with DOL; or if we disagree, don't issue NOV.)

Pros - We will know DOL's final position (for now we have to assume same as ALJ)
We will also have the benefit of reading the SAM report

Cons - Less timely still
Individuals' memories fade more

Region III Proposal

Hold conference in abeyance until we receive and review the SAM report. At that time, determine whether to proceed with conference or wait for Secretary's decision (if still pending).

Note: In our conference invitation letters, we asked both M-K and WEPCo to respond within 30 days (and before the conference if possible) regarding chilled environment issue; in effect, this was a chilling effect letter.

B/6

Down
TO: C. West / R. III

FAX TRANSMITTAL - ONE PAGE ONLY

FROM: M. Stein

(301) 415-1688

①

EA REQUEST & ENFORCEMENT STRATEGY FORM

Del Case: ___ 1st Panel: ___ Post Board/Panel: ___ Re-Panel: ___ Post Caucus: ___ Re-Caucus: ___ Other: ___

EA <u>98-081</u>	
# <u>1</u>	
EATS Data Entry Information	
Today's Date: <u>2/12/98</u>	Region: <u>III</u> Case Type: <u>R</u>
Licensee: <u>Morrison Knudsen (Contractor)</u>	Small Entity <input type="checkbox"/> No <input type="checkbox"/> Yes <u>Contractor</u>
Doc. No.: <u>N/A</u>	Facility (Unit)/Location: <u>Point Beach</u>
Date of Ref.: <u>3/13/97</u>	Last Day of Insp.: <u>N/A</u> ID Date: _____
OI Rpt No.: <u>3-97-013</u>	Conference Closed?: _____
Date of Ref.: <u>3/13/97</u> OI Rpt Date: <u>2/6/98</u>	
Summary of Facts: <u>Alleged discrimination against a former Copunk Welding Engineer for raising safety concerns related to welding procedures at Point Beach.</u>	
<u>DOL ALJ found discrimination 97-ERA-34 Antoyet v. Morrison Knudsen</u>	
Inspection Rpt No. _____	Keywords for SLIVs and NCVs: _____
REMARKS FOR EATS ON BACK	
ES: <u>MHS</u>	

1. SL _____ Supp _____

Details: Panel date set 3/5/98.

SL _____ Supp _____

Details: _____

SL _____ Supp _____

Details: _____

- 2. Risk Significant Case? Yes No: _____
- 3. Prior Escalated Action? No Yes EA: _____ Date: _____
- 4. Lic. ID? No Yes / Lic. Credit No Credit Inad. Info NA Explain: _____
- 5. Corrective Action? Lic. Credit No Credit Inad. Info Explain: _____
- 6. Conference Needed? No Yes Explain: _____
- 7. CP? No CP Base CP Double Base CP Other: _____
- 8. Discretion or Order Needed? No Yes Explain: _____
- 9. Willfulness involved? No Yes OI Coordinated: _____ Needs OI Coordination
- 10. Program Office Represented? No Yes: _____
- 11. OGC Represented? No Yes: _____
- 12. Action? No violation Re-panel Conference Letter Choice Letter SL IV NOV Re-Caucus Region Issues Esc. Action Submit to OE for Quick Review Submit to OE for Full Package Review DEDO Review Commission Disagreement Other: _____

Comments: _____

14. Approved: [Signature]
Date: _____
Faxed: _____



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

February 17, 1998

MEMORANDUM TO: A. Bill Beach, Regional Administrator
Region III

0198-009

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Jack R. Goldberg, Deputy Assistant General
Counsel for Enforcement
Office of the General Counsel

FROM: James Lieberman, Director
Office of Enforcement

A handwritten signature in black ink, appearing to be "James Lieberman".

SUBJECT: OI REPORT 3-97-013; RE: MORRISON KNUDSEN CORPORATION:
ALLEGED DISCRIMINATION AGAINST THE CORPORATE WELDING
ENGINEER

The above captioned OI report involves alleged discrimination against a former Corporate Welding Engineer employed at Morrison Knudsen Corporation (MK) for raising safety concerns related to welding procedures used by MK at Point Beach Nuclear Power Plant. The findings of the report indicate that enforcement action may be appropriate in this case. In addition, on October 28, 1997, a Department of Labor Administrative Law Judge issued a Recommended Decision and Order stating that the complainant was to be reinstated based on MK's violation of the discrimination provisions of the Energy Reorganization Act. A final decision by the DOL Administrative Review Board is pending. By copy of this memorandum, I am requesting that OGC analyze the report and determine whether there is sufficient evidence to take enforcement action. OE has assigned EA 98 - 081 to track this case.

Mike Stein of my staff has discussed this case with members of your staff and arranged a telephone conference for Thursday, March 5, 1998 at 10 a.m. (EST) to discuss the development of an enforcement action. At the time this teleconference was scheduled, each of your offices expressed no conflict. Please ensure that someone from your staff will participate who can approve a course of action in this case. Should we fail to reach a consensus during the call, this matter will be referred to the DEDE for resolution.

NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF
DIRECTOR, OFFICE OF ENFORCEMENT

A handwritten signature in black ink, appearing to be "D/S".

Regional Staff may participate by calling my office at (301) 415-2741; those in headquarters may attend in Room O7-H-1. If there is a significant scheduling problem, please call me as soon as possible as an alternate time can be arranged.

cc: A. Thadani, DEDE
R. Zimmerman, NRR
G. Caputo, OI
C. Carpenter, NRR
L. Gundrum, NRR
H. Clayton, RIII
C. Weil, RIII

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF
DIRECTOR, OFFICE OF ENFORCEMENT**

TO: B Clayton / C. veal RUE

FROM: M. Skem

(301) 415-1689

2

EA REQUEST & ENFORCEMENT STRATEGY FORM

Del Case: _____ 1st Panel: Post Board/Panel: _____ Re-Panel: _____ Post Caucus: _____ Re-Caucus: _____ Other: _____

EATS Data Entry Information

EA 98-081
#2

Date of Request: 3/5/98 Region: III Case Type: R Small Entity No Yes
Licensee: Morrison Knudsen (Contractor) Facility (Unit)/Location: Corporate MK / Point Beach
Doc. No.: N/A Last Day of Insp.: N/A ID Date: _____
Date of Ref.: 3/13/97 OI Rpt No.: 3-97-013 OI Rpt Date: 2/6/98 Conf. Closed?: _____
Referral to DOJ: _____ Action Date DOJ: _____ Recommended Action: D (Decline) or P (Prosecute)

Summary of Facts: Alleged Discrimination against a former CVE for safety concerns related to velocity procedures @ Point Beach & DC Cook. DOL ALSO found discrimination 97-EHA-34 Applicant v. Morrison Knudsen

Inspection Rpt No. _____ Keywords for SLIVs and NCVs: _____

REMARKS FOR EATS ON BACK

ES: MHS

Significance: Actual _____ Potential _____ Regulatory _____; SALP Area(s) _____

1. SL _____ Supp _____
Details: Transcribed Closed Ent. Conference with Morrison Knudsen - Specific individuals in MK to be invited. Complainant to be invited - letter to Point Beach asking specific questions. Region will collect questions supplied by office, incl OE. PEC letter to MK to include chilling effect language and reference to 1995 Discrimination case against MK.

SL _____ Supp _____
Details _____

- 2. Risk Significant Case? Yes No: _____
- 3. Prior Escalated Action? No Yes EA: 95-079 Date: 8/95 Discrimination case against MK
- 4. Lic.ID? No Yes / Lic. Credit No Credit Inad. Info NA Explain: N/A
- 5. Corrective Action? Lic. Credit No Credit Inad. Info Explain: N/A
- 6. Conference Needed? No Yes Explain: PEC w Morrison Knudsen - Discourse & Complaint invited
- 7. CP? No CP Base CP Double Base CP Other: N/A
- 8. Discretion or Order Needed? No Yes Explain: N/A
- 9. Willfulness involved? No Yes OI Coordinated: _____ Needs OI Coordination
- 10. Program Office Represented? No Yes: PM / Under Inv. Branch 11. OGC Represented? No Yes: Sus. C.
- 12. Action? No violation Re-panel Conference Letter Choice Letter SL IV NOV Re-Caucus Region Issues Esc. Action
 Submit to OE for Quick Review Submit to OE for Full Package Review DEDO Review Commission Disagreement
 Other: Letter to Complainant

13. Comments: _____ 14. _____

Approved: _____
Date: 3/5
Faxed: _____

B/9

Doc Name G:\EA.DRL

F

3

TO: B. Clayton / C. Weil RIII FAX TRANSMITTAL - ONE PAGE ONLY FROM: M. Stein (301) 415-1688
EA REQUEST & ENFORCEMENT STRATEGY FORM

Del Case: _____ 1st Panel: _____ Post Panel: _____ Re-Panel: _____ Post Caucus: _____ Re-Caucus: Other: _____

EA 98-081

EATS Data Entry Information

#3

Date of Request: 10/23/98 Region: III Case Type: R Small Entity No Yes
Licensee: Morrison Knudsen (Contractor) Facility (Unit)/Location: Corporate MK / Point Beach
Doc. No.: N/A Last Day of Insp.: _____ ID Date: _____
Date of Ref.: 3/13/97 OI Rpt No.: ~~1514~~ 3-97-013 OI Rpt Date: 2/6/98 Conf. Closed?: _____
Referral to DOJ: _____ Action Date DOJ: _____ Recommended Action: D (Decline) or P (Prosecute)
Summary of Facts: Alleged Discrimination against former CWE for raising safety concerns related to wetting procedures @ Point Beach & McCook. ALE found discrimination - OI found discrimination
Inspection Rpt No. _____ Keywords for SLIVs and NCVs: _____

REMARKS FOR EATS ON BACK

ES: MHS

Significance: Actual _____ Potential _____ Regulatory _____; SALP Area(s) _____

1. SL _____ Supp _____
Details: OE, OGC & Region III will review Report conclusions - Study Region III Env. Panel to make decision on who will review documents and scope of review. Next Panel on 10/29/98. Strategy on proceeding will be discussed @ the next panel.

SL _____ Supp _____
Details

- 2. Risk Significant Case? Yes No: _____
- 3. Prior Escalated Action? No Yes EA: 95-079 Date: 8/95 Discrimination Case Against MK
- 4. Lic.ID? No Yes / Lic. Credit No Credit Inad. Info NA Explain: N/A
- 5. Corrective Action? Lic. Credit No Credit Inad. Info Explain: _____
- 6. Conference Needed? No Yes Explain: Perhaps after review of SAM conclusions
- 7. CP? No CP Base CP Double Base CP Other: _____
- 8. Discretion or Order Needed? No Yes Explain: _____
- 9. Willfulness involved? No Yes; OI Investigating OI needs to be notified OVOE dispute memo needed Additional OI coordination needed
- 10. Program Office Represented? No Yes: _____ 11. OGC Represented? No Yes: Susan Chidake
- 12. Action? No violation Re-panel Conference Letter Choice Letter SL IV NOV Re-Caucus Region Issues Esc. Action
 Submit to OE for Quick Review Submit to OE for Full Package Review DEDE Review Commission Disagreement
 Other: _____
- 13. Comments: _____ 14. Approved: B BLO
Date: 10.23.98
Faxed: _____

F

TO: B. Clayton / C. Vail RIII FROM: M. Stern (301) 415-1688 (4)

EA REQUEST & ENFORCEMENT STRATEGY FORM

Del Case: _____ 1st Panel: _____ Post Panel: _____ Re-Panel: Post Caucus: _____ Re-Caucus: _____ Other: _____

EATS Data Entry Information

EA 98-081
#4

Date of Request: 10/29/98 Region: III Case Type: R Small Entity No Yes

Licensee: Morrison Knudsen (Contractor) Facility (Unit)/Location: Corporate MK / Point Beach

Doc. No.: N/A Last Day of Insp.: _____ ID Date: _____

Date of Ref.: 3/13/97 OI Rpt No.: 3-97-013 OI Rpt Date: 2/6/98 Conf. Closed?: _____

Referral to DOJ: _____ Action Date DOJ: _____ Recommended Action: D (Decline) or P (Prosecute)

Summary of Facts: Alleged Discrimination against a former CWF for missing safety concerns related to wetting procedures at Point Beach a MC Cont. Both DOE ALJ & OI found discrimination. Case was settled @ DOE on demand

Inspection Rpt No. _____ Keywords for SLIVs and NCVs: _____

REMARKS FOR EATS ON BACK

ES: MHS

Significance: Actual _____ Potential _____ Regulatory _____; SALP Area(s) _____

1. SL _____ Supp _____ Regional Counsel
Details: Bruce & Jack Grobe Region III to draft Proprietary Letter response back to MK - need redacted version of this report.

SL _____ Supp _____
Details: OE, Region III, OGC + [redacted] to do a substantive review of SAM report. Focus on facts that support OI conclusions / DOE ALJ ~~conclusions~~ conclusions. Revisit this in another panel with our review results on ~~Wed~~ Thursday, ~~October~~ December 3, 1998.

- 2. Risk Significant Case? Yes No: _____
- 3. Prior Escalated Action? No Yes EA: 95-079 Date: 8/95 Discrimination Case against MIC
- 4. Lic.ID? No Yes / Lic. Credit No Credit Inad. Info NA Explain: N/A
- 5. Corrective Action? Lic. Credit No Credit Inad. Info Explain: _____
- 6. Conference Needed? No Yes Explain: _____
- 7. CP? No CP Base CP Double Base CP Other: _____
- 8. Discretion or Order Needed? No Yes Explain: _____
- 9. Willfulness Involved? No Yes; OI Investigating OI needs to be notified O/OE dispute memo needed Additional OI coordination needed
- 10. Program Office Represented? No Yes: _____
- 11. OGC Represented? No Yes: Susan Chiodella
- 12. Action? No violation Re-panel Conference Letter Choice Letter SL IV NOV Re-Caucus Region Issues Esc. Action
 Submit to OE for Quick Review Submit to OE for Full Package Review DEDE Review Commission Disagreement
 Other: _____

13. Comments: _____ 14. Approved: [Signature]
Date: 10-29-98
Faxed: _____

(F)

FAX TRANSMITTAL - ONE PAGE ONLY

TO: Brent Clayton

FROM: M. Spinn

(301) 415-1688

EA REQUEST & ENFORCEMENT STRATEGY FORM

Del Case: ___ 1st Panel: ___ Post Panel: ___ Re-Panel: Post Caucus: ___ Re-Caucus: ___ Other: ___

EATS Data Entry Information

EA 98-081
~~Report~~
#15

Date of Request: 12/3/98 Region: III Case Type: A Small Entity No Yes
Licensee: Merriam Knudsen (Contractor) Facility (Unit)/Location: Corporate Mkt / Point Bch
Doc. No.: N/A Last Day of Insp.: ___ ID Date: 10/1/98-Receipt of State Report
Date of Ref.: 3/13/97 OI Rpt No.: 3-97-013 OI Rpt Date: 2/6/98 Conf. Closed?: ___
Referral to DOJ: ___ Action Date DOJ: ___ Recommended Action: D (Decline) or P (Prosecute)
Summary of Facts: Alleged Discrimination Against former CUE for raising safety concerns

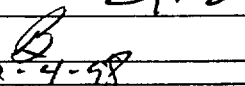
Inspection Rpt No. ___ Keywords for SLIVs and NCVs: ___
REMARKS FOR EATS ON BACK ES: MHS

Significance: Actual ___ Potential ___ Regulatory ___; SALP Area(s) ___

1. SL ___ Supp ___
Details: Stier Report examined by Bruce Beason, Mike Spinn & Susan Chiodake
Region to prepare conference letters to MK & 2 individuals
Date of conference tentatively set for 1/20/99.

SL ___ Supp ___
Details: ___

SL ___ Supp ___
Details: ___

- 2. A. Risk Significant Case? Yes No; 2. B. Regulatory Significance? Yes No;
- 3. Prior Escalated Action? No Yes EA: EA 95-079 Date: 8/95 Discrimination Case Against MK
- 4. Lic.ID? No Yes / Lic. Credit No Credit Inad. Info NA Explain: N/A
- 5. Corrective Action? Lic. Credit No Credit Inad. info Explain: ___
- 6. Conference Needed? No Yes Explain: ___
- 7. CP? No CP Base CP Double Base CP Other: ___
- 8. Discretion or Order Needed? No Yes Explain: ___
- 9. Willfulness involved? No Yes; OI Investigating OI needs to be notified OVOE dispute memo needed Additional OI coordination needed
 Awaiting DOJ Needs coordination with DOJ
- 10. Program Office Represented? No Yes; 11. OGC Represented? No Yes: Susan Chiodake
- 12. Action? No violation Re-panel Conference Letter Choice Letter SL IV NOV Re-Caucus Region Issues Esc. Action
 Submit to OE for Quick Review Submit to OE for Full Package Review DEDE Review Commission Disagreement
 Other: ___
- 13. Comments: ___ 14. Approved: 
Date: 12-4-98
Faxed: ___

5
F

12/24/98

From: Michael Stein
To: C. H. Weil
Subject: Re: Morrison Knudsen Discussion Topics

Chuck,

I rereviewed the letter with the discussion topics for MK. Your 4 bullets look good. I would just add:

A. How the 1996 Performance appraisal differs from Arteyet's past appraisals.

B. "areas in which the Hartford Steam Boiler Company found deficiencies."- Your sentence needs to be completed. Do we want to limit this discussion to Hartford Company. How about cases where another audit company made positive findings and the employee was rewarded or was disciplined for negative findings by another audit company.

C. Good

D. I would add the EA number of the Ft. St. Vrain finding. I think it was EA 95-079 dated 8/14/95 (Discrimination Case against MK) in which they received a SLII NOV for a hostile work environment situation created by MK supervisors at Ft. St. Vrain.

I wouldn't add any more generic topics for the company. I have some interesting questions for the 2 individuals. Chuck, what is most interesting is that the recipient of the 1995 NOV letter and the chief manager who attended the PEC for the 1995 case was Mr. Pardi.

Please call if you need any additional help.

Thanks

Mike

>>> C. H. Weil 12/24 12:17 PM >>>

I prepared a list for discussion topics for the Morrison Knudsen enforcement conference. It is the first enclosure to the attached letter. Please review and provide your comments by noon on Monday, 12/28/99. We need to have this letter in the mail ASAP.

A preconference strategy session is scheduled for Monday, January 25, 1999, at 10:00 a.m. (Central) in the IRC Conference Room.

For Jack Grobe, Linda has put the strategy meeting on your calendar for 1/25.

For Susan and Mike, the enforcement coordinator counterpart meeting conflicted with having the strategy session on Thursday, 1/21/99, and with Susan unavailable on Friday, 1/22/99, Monday 1/25/99 was the next best option.

Chuck

CC: H. Brent Clayton, Richard Borchardt

B/13

TO: Chuck Weil / B. Clayton

FROM: M. Stern

(301) 415-1688

EA REQUEST & ENFORCEMENT STRATEGY FORM

6

Del Case: _____ 1st Panel: _____ Post Panel: _____ Re-Panel: _____ Post Caucus: _____ Re-Caucus: Other: _____

EA 98-081

EATS Data Entry Information

Date of Request: 5/7/99 Region: III Case Type: A Small Entity No Yes
 Licensee: Morrison Knudsen (Contractor) Facility (Unit)/Location: Corporate Mk / Ft. Belknap
 Doc. No.: N/A Last Day of Insp.: _____ ID Date: 10/98 - Receipt of \$1000 Pay
 Date of Ref.: 3/13/97 OI Rpt No.: 3-97-013 OI Rpt Date: 2/6/98 Conf. Closed?: _____
 Referral to DOJ: _____ Action Date DOJ: _____ Recommended Action: D (Decline) or P (Prosecute)
 Summary of Facts: Alleged Discrimination Against CWE for raising safety concerns
 Inspection Rpt No. _____ Keywords for SLIVs and NCVs: _____

REMARKS FOR EATS ON BACK

ES: MUS

Significance: Actual _____ Potential _____ Regulatory _____; SALP Area(s) _____

1. SL _____ Supp _____

Details:

PEC with MK on January 27, 1999.

Participants - Jim Liebers, Mike Stern (OE), Dennis Dumbly (OGC)

Region III - Chuck Weil, Jim Caldwell, Jack Grobe

SL _____ Supp _____

Details:

Andy Dunlop
Extreme Green-Bush
Brent Clayton

Work on a Confirmatory order to MK - Issues outside Contractor to re-eval
letters of Reprimand to 2 manager individuals train supervisors on
annual basis

SL _____ Supp _____

Details:

If licensee does not accept Confirmatory order Corporate hotline
approach we will fall back on Traditional Approach
Confirmatory order in lieu of NOV - Work on Letters. OE take lead on
drafting order & Letters.

- 2. A. Risk Significant Case? Yes No; 2. B. Regulatory Significance? Yes No;
- 3. Prior Escalated Action? No Yes EA: EA 95-079 Date: 5/95 Discrimination Case Against MK
- 4. Lic. ID? No Yes / Lic. Credit No Credit Inad. Info NA Explain: N/A
- 5. Corrective Action? Lic. Credit No Credit Inad. Info Explain: _____
- 6. Conference Needed? No Yes Explain: Conducted on 1/27/99
- 7. CP? No CP Base CP Double Base CP Other: _____
- 8. Discretion or Order Needed? No Yes Explain: _____
- 9. Willfulness Involved? No Yes; OI Investigating OI needs to be notified OVOE dispute memo needed Additional OI coordination needed
 Awaiting DOJ Needs coordination with DOJ
- 10. Program Office Represented? No Yes; 11. OGC Represented? No Yes: Dennis Dumbly
- 12. Action? No violation Re-panel Conference Letter Choice Letter SL IV NOV Re-Caucus Region Issues Esc. Action
 Submit to OE for Quick Review Submit to OE for Full Package Review DEDE Review Commission Disagreement
 Other: _____

13. Comments: _____ 14. Approved: [Signature]
Date: 5/10
Faxed: _____

[Handwritten Mark]

MK Meeting - 6/21/99

Pat Hickey

MK idens

Substantial focus on training - Organizational structure - Employees Concerns Program
Set up in 1995 - incident at Ft. St. Vrain

MK involvement in nuclear area - less than 100 employees at all locations
Small home office Cleveland office < 20 people involved
Admin. arm

2 Current projects - 20 employees @ Calvert Cliffs
SG Replacement project
- Watts Mill → Decommissioning Project
50-60 employees

2 New Companies

WELCO

100% owned by BNFL

Westinghouse Civit Services - Electromagnetic

Industrial Prod.

Pump repair

STG ^{limited} ~~Inc.~~

owned by MK & Duke

3 Licenses

→ Steam Generator Replacement Corporation

~~STG inc.~~

SGT inc.

Craft workers to do welding are STG employees

Supervisors are STG employees

MK Corporate employees have duties w/ site STG employees

1. Seeking training of MK and STG supervisors & managers.

Draft Letter to MK

Had a meeting - MK is considering the

following items

- Back for MK - Propose to do

B/15

From: Susan Chidakel
To: Michael Stein
Date: Fri, Jul 2, 1999 9:42 AM
Subject: Re: MK Letter

Great job, Mike. Please provide me with a file copy when it is signed out. Thanks.

>>> Michael Stein 07/01 10:31 AM >>>
Jim,

The revised letter is in your box taking Susan's, Region III's and your comments into account. I have cc:ed the Region and Susan on this e-mail as well. The file is attached for your convenience. I will be in and out of my office all day today so if I don't see you-have a wonderful 4th of July weekend. I will be back in the office on Wednesday.

Thanks

Mike

B/16



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

July 9, 1999

Mr. J. Patrick Hickey, P.C.
Shaw Pittman Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

Dear Mr. Hickey:

On June 21, 1999, we met to discuss the potential for a Confirmatory Order which the NRC intends to issue to Morrison Knudsen (MK). The Order would resolve certain matters in connection with the removal and transfer of a former MK Group Welding Engineer (GWE) after the GWE raised certain nuclear safety concerns. A U.S. Department of Labor (DOL) Administrative Law Judge (ALJ) determined that this action by MK constituted discrimination in violation of Section 211 of the Energy Reorganization Act, Case No. 97-ERA-34. During our meeting, we discussed various corrective and remedial actions which MK could implement in order to improve its safety conscious work environment and to resolve NRC staff concerns related to the removal and transfer of the GWE. Based on our conversation we propose that the following conditions be incorporated into the Order:

1. MK and SGT, Inc. (SGT) agree to hire an independent consultant to conduct audits, to review the MK Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in condition #2. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's entire ECP to be completed by January, 2000. MK and SGT shall inform the NRC as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT shall share these recommendations with the NRC.

2. MK and SGT will conduct mandatory continuing training programs on an annual basis for all MK and SGT, Inc. supervisors and managers. All temporary craft and permanent MK and SGT employees should receive initial employee protection training as part of their access program or initial orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in condition #1 above, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

B/17

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a Safety Conscious Work Environment at MK and SGT and at its temporary job sites.

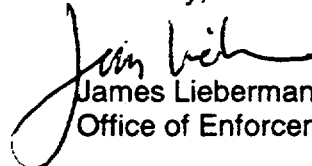
3. MK and SGT shall, beginning in September, 1999, integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment survey, i.e. questionnaire, developed by the experienced independent consultant. MK and SGT also agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, e.g. that the existence of the safety concerns hotline is well known to all employees. MK and SGT also agree to conduct audits at its temporary job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT also agree to expand its exit survey to include safety conscious work environment issues and to conduct exit surveys of its permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of the Order. MK and SGT shall provide to the NRC information pertaining to any later actions to address issues raised by the survey and audit results.

4. Following the issuance of the Confirmatory Order, MK and SGT will issue company-wide publications to inform all of its employees of this Confirmatory Order, as well as employee rights to raise safety concerns to the companies and to the NRC without fear of retaliation. These publications shall also be posted at all temporary job sites and at the companies' corporate headquarters.

Please inform us whether MK and SGT will consent to a Confirmatory Order with the above outlined conditions. In addition we would appreciate both MK and SGT waivers of their right to a hearing on this Confirmatory Order and signature on the enclosed Hearing Waiver forms. If you agree to these conditions we will begin to prepare the Order.

Should you have any questions or wish to schedule another meeting to discuss the above provisions, please call Michael Stein of my staff at (301) 415-1688.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosure: Hearing Waiver Forms

HEARING WAIVER FORM

Morrison Knudsen (MK) hereby agrees to comply with the commitments described in this letter and agrees to incorporation of these commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, MK consents to the issuance of the Confirmatory Order, Effective Immediately, with the commitments described on pages 1 and 2 of this letter and, by doing so, pursuant to 10 CFR 2.202(a)(3) and (d), MK waives the right to request a hearing on all or any part of the Order.

Thomas H. Zarges, President and CEO
Morrison Knudsen Corporation

Date

Distribution:

MKnapp, DEDE
JLieberman, OE
JDyer, RIII
BClayton, RIII
DDambly, OGC
SCHidakel, OGC
EA File
MStein, OE

Concurrence:

OE <i>M.S.</i>	OGC	Region III	OE <i>JL</i>
MStein	SCHidakel	JDyer	JLieberman
7/7/99	7/7/99	7/8/99	7/8/99

per e-mail *per Telephone e-mail*
Check with

G:\hicklett.wpd

ShawPittman

A Law Partnership Including Professional Corporations

J. PATRICK HICKEY
202.663.8103
patrick.hickey@shawpittman.com

July 23, 1999

Mr. James Lieberman
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Confirmatory Order to Morrison Knudsen

Dear Mr. Lieberman:

Thank you for your letter of July 9, 1999 regarding a potential confirmatory order to be issued to Morrison Knudsen Corporation ("MK"). As you suggested, I have discussed this matter further with Michael Stein of your staff. Based on that discussion, I have the following understanding of some additional points to be included in the confirmatory order:

1. The Order will indicate that MK maintains that no violation of 10 C.F.R. § 50.7 occurred in connection with the removal and transfer of the former MK Group Welding Engineer (GWE). MK believes that those actions were legitimately based on that employee's job performance, and were in no way connected with the raising of nuclear safety concerns. An independent investigation performed for MK by the law firm of Stier, Anderson and Malone concluded that no retaliatory conduct had occurred, and that a substantial amount of significant information was not presented at the hearing before the Department of Labor Administrative Law Judge.
2. In addition, MK has taken steps to avoid any "chilling effect" from these circumstances, and maintains that no MK employees have been deterred from reporting safety concerns as a result of these events.
3. We understand that the language in the Order regarding the hiring of an independent consultant with regard to the MK Employees' Concerns Program ("ECP") does not contemplate the performance of Appendix B audits, but rather an evaluation of the MK Program and that of the Steam Generating Team, Ltd. ("SGT").

B/18

ShawPittman

Mr. James Lieberman
July 23, 1999
Page 2

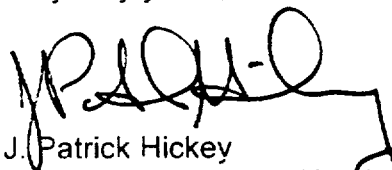
4. Although the Confirmatory Order would be issued to MK and SGT, Inc., we understand that its applicability will be limited to the operations and employees of the Energy Division of the MK Engineering and Construction Group and of SGT, who are engaged in or associated with Energy Division projects regulated by the Nuclear Regulatory Commission.

We also suggest that the Order include some language authorizing an appropriate NRC official to relax or rescind in writing any of the conditions of the Order on a showing by MK or SGT of good cause. This would avoid the necessity of additional orders in the event that circumstances warrant some modification of the terms of the Order.

I have advised MK and SGT of these provisions as well as those contained in your letter of July 9. They have authorized me to inform you that they are agreeable to the issuance of an Order containing those terms. As you requested, copies of the Hearing Waiver forms signed by Mr. Zarges on behalf of the Engineering and Construction Group of MK, and by Mr. Cepkauskas on behalf of SGT, Inc. will be forwarded shortly.

We appreciate your cooperation and that of your staff in resolving this matter. Please contact me if you have any questions.

Very truly yours,



J. Patrick Hickey
Counsel for Morrison Knudsen/SGT, Inc.

cc: Thomas H. Zarges, Morrison Knudsen
Martin D. Cepkauskas, SGT

ShawPittman

A Law Partnership Including Professional Corporations

J. PATRICK HICKEY
202.663.8103
patrick.hickey@shawpittman.com

August 9, 1999

Mr. James Lieberman
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Morrison Knudsen Corporation

Dear Mr. Lieberman:

Enclosed in accordance with the terms of your letter of July 9 and my response of July 23 are Hearing Waiver forms signed by Thomas Zarges and Martin Cepkauskas.

Very truly yours,


J. Patrick Hickey

Enclosures

cc: Thomas H. Zarges, President and CEO, Morrison Knudsen Corporation
Martin D. Cepkauskas, President, SGT, LLC

B/19

HEARING WAIVER FORM

Morrison Knudsen (MK) hereby agrees to comply with the commitments described in this letter and agrees to incorporation of these commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, MK consents to the issuance of the Confirmatory Order, Effective Immediately, with the commitments described on pages 1 and 2 of this letter and, by doing so, pursuant to 10 CFR 2.202(a)(3) and (d), MK waives the right to request a hearing on all or any part of the Order.



Thomas H. Zarges, President and CEO
Morrison Knudsen Corporation

8.4.99
Date

SENT BY: SHAW PITTMAN


: 7- 9-99 :12:03PM :

SHAW PITTMAN-

216 523 8149;# 5/ 5
P. 12/65

HEARING WAIVER FORM

SGT, Inc. hereby agrees to comply with the commitments described in this letter and agrees to incorporation of these commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, SGT, Inc. consents to the issuance of the Confirmatory Order, Effective Immediately, with the commitments described on pages 1 and 2 of this letter and, by doing so, pursuant to 10 CFR 2.202(a)(3) and (d), SGT, Inc. waives the right to request a hearing on all or any part of the Order.



Martin D. Cepkauskas, President and CEO
SGT, Inc. LLC

8/5/99
Date

2

From: Vonna Ordaz
To: Michael Stein
Date: Fri, Aug 20, 1999 9:53 PM
Subject: MK Confirmatory Order

Mike,

NRR concurs on the draft Confirmatory Order for Morrison Knudsen (MK) that you e-mailed to me. Although, based on a briefing to Sam Collins on the Order, we do have a couple of followup questions that we would like to understand before you send the final Order back for NRR concurrence next week.

- 1) What process takes place if MK does not comply with the confirmatory order? *What if criminal process in cover story*
- 2) Who will be doing the NRC followup work for the order, and what does it entail? *Regist. will follow up
Needs to be documented.*

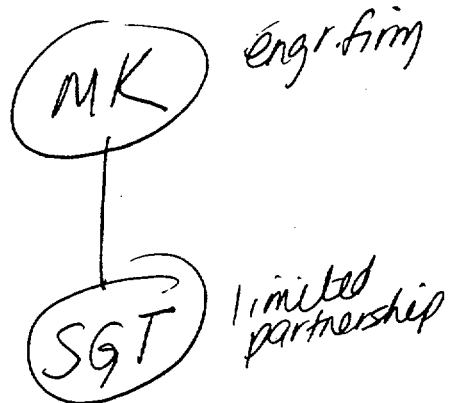
When you and I discussed these questions on Friday (8/20/99), you mentioned that you weren't absolutely sure of the answers since this was the first non-licensee order that you were aware of. Perhaps, Mr. Lieberman would recall some historical information in this area. Would you please ask him, and get back to John Monninger with the response. I will be out of the office from 8/23-27/99, and John Monninger will be filling in for me during this time.

Thank you,

Vonna

CC: John Monninger, William Kane

Temporary job sites



8/20

From: Michael Stein
To: John Monninger
Date: Mon, Aug 23, 1999 4:09 PM
Subject: Fwd: Re:MK Order

John,

Attached is my redraft of the MK Order for NRR concurrence. I understand that Vonna has discussed this with Bill Kane and Sam Collins. Thanks.

Mike

CC: Richard Borchardt

B/21

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) and its affiliate, SGT, LLC, in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, LLC, has consented to the issuance of the Confirmatory Order and waived its right to request a hearing on all or any part of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Mr. R. W. Borchardt, Director, Office of Enforcement, who can be reached at (301) 415-2741. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.
M. Reddemann, Site Vice President
Point Beach Nuclear Plant

In the Matter of
Morrison Knudsen

)
)
)
SGT, LLC

EA 98-081

*- Logbook
- Morrison Knudsen
- NRCSS Concern*
M/K
BRFL
Other Orders
to Vendors

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple facilities licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission). MK headquarters is located in Cleveland, Ohio. SGT, LLC (SGT) is an affiliate of MK involved in the steam generator replacement projects for MK.

II

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if the former Corporate Group Welding Engineer (GWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013), OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the GWE's identification of deficiencies in welding procedures at the Point Beach Nuclear Plant was at least a contributing factor in MK's decision to remove him from his position as GWE on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ), in DOL Case No. 97-ERA-34, determined that the removal of the GWE was in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation of the employee protection requirements of the NRC regulations. MK retained the services of a law firm to perform an independent investigation.

MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity.

III

MK, and its affiliate SGT, have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary job sites. Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training programs for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, the definition of protected activity and discrimination, and appropriate responses to the raising of safety concerns by employees. MK and SGT also agreed that such training will be conducted by an independent trainer with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK and SGT, also also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this Confirmatory Order and employee protection under the Energy Reorganization Act, as amended, Section 211, and NRC Form 3, at all MK and SGT temporary job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT, Inc. employee concerns program as stated in the independent third party assessment; (3) periodic updates of an employee cultural survey developed by an independent contractor to ensure that MK and SGT employees feel free to raise safety

concerns without fear of retaliation; and (4) the expansion of the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to assure itself that such employees felt free to raise safety concerns while employed by MK or SGT.

IV

Since MK and SGT have committed to taking the corrective actions as outlined above, and since MK and SGT have committed to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff has determined that its concerns regarding employee protection at MK corporate headquarters and MK and SGT temporary job sites can be resolved through confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT consented to waive any right to a hearing on this Order. MK and SGT further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured and that the employee protection programs will be enhanced. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT's consent, this Order is immediately effective upon issuance.

Boilerplate



US, the ^{w/c} staff everywhere else

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT SHALL DO THE FOLLOWING:

1. MK and SGT will integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment, as described in the NRC's letter to Mr. Patrick Hickey dated July 9, 1999.

2. MK and SGT agree to hire an independent consultant to conduct audits, to review the MK and SGT Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in condition #3. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's entire ECP to be completed by January, 2000. MK and SGT shall inform the NRC as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT shall share these recommendations with the NRC.

Should be centralized in one

3. MK and SGT will conduct mandatory continuing training programs on an annual basis for all MK and SGT supervisors and managers. All temporary craft and permanent MK and SGT, Inc. employees should receive initial employee protection training as part of their access program or initial orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in condition #2 above, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent

consultant, if the consultant does not conduct such training, and include:

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a Safety Conscious Work Environment at MK and SGT, Inc. and at its temporary job sites.

4. MK and SGT ^{will} shall integrate, into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites, a cultural assessment survey, i.e. questionnaire, developed by the experienced independent consultant. MK and SGT agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, e.g. that the existence of the safety concerns hotline is well known to all employees. MK and SGT also agree to conduct audits at its temporary job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT also agree to expand its exit survey to include safety conscious work environment issues and to conduct exit surveys of its permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of the Order. MK and SGT shall provide to the NRC information pertaining to any later actions to address issues raised by the

How do I know?

the NRC information

survey and audit results.

5. Following the issuance of the Confirmatory Order, MK and SGT will issue and post company-wide publications, i.e. this Confirmatory Order, ERA Section 211, and NRC Form 3, to inform all of its employees of this Confirmatory Order, as well as employee rights to raise safety concerns to the companies and to the NRC without fear of retaliation. These publications shall also be posted at all temporary job sites and at the companies' corporate headquarters.

The Regional Administrator, Region III, may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to the contractors. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission

MK and SGT
a list
of contractors
consultants

will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of August, 1999

Distribution
NUDOCS
PDR
SECY
CA
WTravers, EDO
FMiraglia, DEDR
BBorchardt, OE
JDyer, RIII
BClayton, RIII
SCollins, NRR
DDambly, OGC
Enforcement Coordinators
RI, RII, RIV
MStein, OE
GCaputo, OI
HBell, OIG
EA File

OE	NRR	OGC	RIII	OE:D	DEDR
MStein	SCollins	DDambly	JDyer	RWBorchardt	FMiraglia
8/ /99	8/ /99	8/ /99	8/ /99	8/ /99	8/ /99

G: MKORD.WPD

Sent 9/13/99

From: Michael Stein
To: Brent Clayton, Charles Weil, Gregory Cwalina, S...
Subject: MK Order

Please see my latest draft of the MK Order. It is near completion and we will soon be sending it to the EDO's office and to the licensee for confirmation of its acceptance. Please send me any minor editorial comments and all of your concurrences: for NRR, OGC, & Region III.

The major difference between this version and the last version was that all information will now be sent to the NRR branch chief for QA and Vendor Inspection.

Thanks,

Mike

CC: Dennis Dambly, Jim Dyer, Richard Borchardt

B/22

From: Vonna Ordaz
To: Michael Stein
Date: Wed, Sep 15, 1999 10:24 AM
Subject: Re: MK Confirmatory Order

NRR Comments
Concurs 9/15/99

Mike,

NRR concurs with comments on the MK Confirmatory Order. Most of the comments were minor editorial items. We also have a couple of clarifications, which include:

1) In certain parts of the Order that states "NRC", we would like to make sure it's clear that we are referring to the NRC Branch Chief for Quality Assurance, etc., and include the appropriate mailing address, so the consultants know where to send the information to.

2) Since MK is spread across both the reactor and materials areas, we would like to clarify the statement which mentions that the Order is for all MK and SGT temporary nuclear job sites and at the MK corporate headquarters to state, "all MK and SGT temporary nuclear reactor and materials job sites and at the MK corporate headquarters."

I will bring the marked-up version of the Order with NRR's comments to you. Please let me know if you have any questions on our comments.

Thank you,
Vonna

>>> Michael Stein 09/14 11:24 AM >>>

Thanks to Chuck Weil of Region III and Susan Chidakel of OGC, I have modified the MK Order for clarification.

Ordering clauses 1 and 2 do apply to all MK and SGT employees in corporate as well as temporary nuclear jobsites.

Footnote #1 explains that SGT does the steam generator changeout for MK and that SGT employees were involved in the discrimination against the GWE.

I changed some of the timing-Region III suggests six months so they need to do an assessment by March 2000-they need to tell us who their independent consultant is by the end of November 1999-they need to factor annual training into the 2000 calendar year and they need to tell us when their cultural assessments will begin.

The attached MK Order contains the Region III and OGC comments.

Thanks to all,

Mike

CC: Brent Clayton, Bruce Boger, Charles Weil, Denni...

B/23

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Zarges:

(SGT) The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) and its affiliate, SGT, LLC, in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, LLC, have consented to the issuance of the Confirmatory Order and waived their right to request a hearing on all or any part of the Confirmatory Order. X

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Mr. Michael Stein, Office of Enforcement, who can be reached at (301) 415-1688. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.
M. Reddemann, Site Vice President
Point Beach Nuclear Plant

In the Matter of

EA 98-081

Morrison Knudsen
SGT, LLC

)
)
)
)

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple facilities licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission). MK headquarters is located in Cleveland, Ohio. SGT, LLC (SGT) is an affiliate of MK involved in the steam generator replacement projects for MK.

reactor and materials

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II

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if the former Corporate Group Welding Engineer (GWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013), OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the GWE's identification of deficiencies in welding procedures by MK and SGT employees at the Point Beach Nuclear Plant was at least a contributing factor in MK's decision to remove him from his position as MK Corporate GWE on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ), in DOL Case No. 97-ERA-34, determined that the removal of the GWE was in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation of the NRC's employee protection requirements (10 CFR 50.7). MK retained the services of a law firm to perform an independent investigation.

MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity. While MK and SGT do not agree that a violation of the Energy Reorganization Act, as amended, or the Commission's regulations occurred, in response to the DOL and OI findings, MK and SGT have agreed to take the actions as described in Section V of this Order.

III

MK, and its affiliate SGT,¹ have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary nuclear ^{reactor and materials} job sites. Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training program for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, the definition of protected activity and discrimination, and appropriate responses to the raising of safety concerns by employees. MK and SGT also agreed that such training will be conducted by an independent trainer with expertise in employee concerns programs and employee protection requirements in the nuclear industry. X

In addition, MK and SGT, also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting

¹SGT performs the steam generator replacement work for MK and SGT employees were involved in the discrimination against the MK Corporate Group Welding Engineer.

this Confirmatory Order and employee protection under the Energy Reorganization Act, as amended, Section 211, and NRC Form 3, at all MK and SGT temporary nuclear ^{reactor and materials} job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT [^] employee concerns program as stated in the independent third party assessment; (3) periodic updates of an employee cultural survey developed by an independent contractor to ensure that MK and SGT [^] employees feel free to raise safety concerns without fear of retaliation; and (4) the expansion of the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to ^{ensure} assure itself that such employees ^{feel} feel free to raise safety concerns while employed by MK or SGT. X
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IV

Since MK and SGT have committed to taking comprehensive corrective actions as set forth below, and since MK and SGT have committed to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff has determined that its concerns regarding employee protection at MK corporate headquarters and at MK and SGT temporary nuclear ^{reactor and materials} job sites can be resolved through ^{NRC's} confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. X
X
X

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT consented to waive any right to a hearing on this Order. MK and SGT further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above, and MK and SGT's consent, this Order is immediately effective upon issuance.

X
X
X

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT SHALL DO THE FOLLOWING:

X

LLC

1. MK and SGT shall hire an independent consultant to conduct audits, to review the MK and SGT Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in Condition #2 of this Order. MK and SGT will hire this independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's ECP to be completed by March, 2000. MK and SGT shall inform the NRC by November 1, 1999 as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT corporate and temporary nuclear job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant.

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X

reactor and material

MK and SGT shall provide the report of recommendations of their independent consultant to the NRC and send all information to the NRC Branch Chief, QA, Vendor Inspection,

X
X

Maintenance and Allegations Branch, Office of Nuclear Reactor Regulation at U.S. NRC
0-9A1 Washington DC 20555.

X

2. MK and SGT will conduct mandatory continuing training programs on an annual basis beginning in the year 2000 calendar year for all MK and SGT supervisors and managers at their

calendar

revised 11/10/02

corporate and temporary nuclear job sites. All temporary craft and permanent MK and SGT employees shall receive initial employee protection training as part of their access program or orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in Condition #1 of this Order, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

X

X

X

(A) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

calendar

X

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safety conscious work environment at MK and SGT and at their temporary nuclear job sites.

reactor and materials

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3. MK and SGT will integrate, into their overall program for enhancing the work environment and safety culture at their corporate headquarters and their temporary nuclear job sites, a cultural assessment survey, (i.e. questionnaire), developed by the experienced independent consultant. The time frame for integration of cultural assessments into the ECP shall be submitted to the NRC by the MK and SGT independent consultant. MK and SGT agree to

reactor and materials

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conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP,

X

(e.g. that the existence of the safety concerns hotline is well known to all employees). MK and SGT also agree to conduct audits at their temporary nuclear job sites soon after the initial staffing of the sites and periodically afterward, as warranted. Lastly, MK and SGT also agree to

reactor and materials

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*NRC
audit for
Quality*

expand their exit survey to include safety conscious work environment issues and to conduct exit surveys of their permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys, and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of this Order by sending the materials to the NRC Office ^{contact} stated in Condition #1 of this Order. MK and SGT will provide to the NRC information ^{follow up?} pertaining to any later actions to address issues raised by the survey and audit results. X X X

4. Following the issuance of this Confirmatory Order, MK and SGT will issue and post this Confirmatory Order, Section 211 of the Energy Reorganization Act, as amended, and NRC Form 3, to inform all of its employees of this Confirmatory Order, as well as their right to raise safety concerns to management and to the NRC without fear of retaliation. These publications shall also be posted at all temporary nuclear ^{center and materials} job sites and at the companies' corporate headquarters.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

^{and SGT?}

VI

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN:

Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to MK and SGT. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this Day of September, 1999

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 PDR
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 WTravers, EDO
 FMiraglia, DEDR
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 JDyer, RIII
 BClayton, RIII
 SCollins, NRR
 DDambly, OGC
 Enforcement Coordinators
 RI, RII, RIV
 MStein, OE
 GCaputo, OI
 HBell, OIG
 EA File

OE	NRR	OGC	RIII	OE:D	DEDR
MStein	SCollins	DDambly	JDyer	RWBorchardt	FMiraglia
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 24, 1999

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) and its affiliate, SGT, LLC, (SGT) in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, LLC, have consented to the issuance of the Confirmatory Order and waived their right to request a hearing on all or any part of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Mr. Michael Stein, Office of Enforcement, who can be reached at (301) 415-1688. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

A handwritten signature in cursive script that reads "Frank J. Miraglia".

Frank Miraglia
Deputy Executive Director
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.
M. Reddemann, Site Vice President
Point Beach Nuclear Plant

B/24

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

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EA 98-081

Morrison Knudsen
SGT, LLC

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple reactor and nuclear materials facilities regulated by the U.S. Nuclear Regulatory Commission (NRC or Commission). MK headquarters is located in Cleveland, Ohio. SGT, LLC (SGT) is an affiliate of MK involved in the steam generator replacement projects for MK.

II

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if a former Corporate Group Welding Engineer (GWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013), OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the GWE's identification of deficiencies in welding procedures by MK and SGT employees at the Point Beach Nuclear Plant was at least a contributing factor in MK's decision to remove him from his position as MK Corporate GWE on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ), in DOL Case No. 97-ERA-34, determined that the removal of the GWE was

in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation of the NRC's employee protection requirements (10 CFR 50.7). MK retained the services of a law firm to perform an independent investigation. MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity. While MK and SGT¹ do not agree that a violation of the Energy Reorganization Act, as amended, or the Commission's regulations occurred, in response to the DOL and OI findings, MK and SGT have agreed to take the actions as described in Section V of this Order.

III

MK, and its affiliate SGT, have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary nuclear reactor and materials job sites. Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training program for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7,

¹Both MK and SGT employees were involved in the alleged discrimination against the MK Corporate Group Welding Engineer.

including, but not limited to, the definition of protected activity and discrimination, and appropriate responses to the raising of safety concerns by employees. MK and SGT also agreed that such training will be conducted by an independent trainer with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK and SGT also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this Confirmatory Order and the employee protection requirements of Section 211 of the Energy Reorganization Act, as amended, and NRC Form 3, at all MK and SGT temporary nuclear reactor and materials job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementing the recommendations of the independent third party assessment to improve the MK and SGT employee concerns program; (3) conducting periodic updates of an employee cultural survey developed by an independent contractor to ensure that MK and SGT employees feel free to raise safety concerns without fear of retaliation; and (4) expanding the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct exit surveys of their permanent and contract employees to ensure that such employees feel free to raise safety concerns while employed by MK or SGT.

IV

Since MK and SGT have committed to taking comprehensive corrective actions as set forth below, and since MK and SGT have committed to monitor the work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff has determined that its concerns regarding employee protection at MK corporate headquarters and at MK and SGT

temporary nuclear reactor and materials job sites can be resolved through NRC's confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT waived any right to a hearing on this Order. MK and SGT further consented to the immediate effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above, and MK and SGT's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. MK and SGT shall hire an independent consultant to conduct audits, to review the MK and SGT Employees Concerns Program (ECP), and to conduct training for MK and SGT supervisors and managers as discussed below in Condition #2 of this Order. MK and SGT will

hire this independent consultant, with experience in ECPs, to also conduct an independent evaluation of MK's and SGT's ECP to be completed by March, 2000. MK and SGT shall inform the NRC by November 1, 1999, as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT corporate and temporary nuclear reactor and materials job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT shall provide the report of recommendations of their independent consultant by March, 2000 to the NRC Branch Chief, Quality Assurance, Vendor Inspection, Maintenance and Allegations Branch, Office of Nuclear Reactor Regulation at U.S. NRC, Mailstop O-9A1, Washington DC 20555.

2. MK and SGT will conduct mandatory continuing training programs on an annual basis beginning in the calendar year 2000 for all MK and SGT supervisors and managers at their corporate and temporary nuclear reactor and materials job sites. All temporary craft and permanent MK and SGT employees shall receive initial employee protection training as part of their access program or orientation when they begin work at an MK or SGT job site. The independent consultant, as outlined in Condition #1 of this Order, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

(A) Annual training on the requirements of 10 CFR 50.7, or similar regulations, through at least calendar year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by

employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safety conscious work environment at MK and SGT and at their temporary nuclear reactor and materials job sites.

3. MK and SGT will integrate, into their overall program for enhancing the work environment and safety culture at their corporate headquarters and their temporary nuclear reactor and materials job sites, a cultural assessment survey (i.e. questionnaire) developed by the independent consultant. The time frame for integration of cultural assessments into the ECP shall be submitted, to the NRC Branch Chief mentioned in Condition #1 of this Order, by the MK and SGT independent consultant. MK and SGT agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, or similar regulations, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP (e.g. that the existence of the safety concerns hotline is well known to all employees). MK and SGT also agree to conduct audits at their temporary nuclear reactor and materials job sites soon after the initial staffing of the sites and periodically afterwards as warranted. Lastly, MK and SGT also agree to expand their exit survey to include safety conscious work environment issues and to conduct exit surveys of their permanent corporate employees and contract employees so as to ensure that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys, and the resulting analysis reports of these ECP documents will

be submitted to the NRC for review for a period of three years from the date of this Order by sending the materials to the NRC contact stated in Condition #1 of this Order. MK and SGT will provide information to the NRC pertaining to any follow-up actions to address issues raised by the survey and audit results.

4. Following the issuance of this Confirmatory Order, MK and SGT will issue and post this Confirmatory Order, Section 211 of the Energy Reorganization Act, as amended, and NRC Form 3, to inform all of its employees of this Confirmatory Order, as well as their right to raise safety concerns to management and to the NRC without fear of retaliation. These publications shall also be posted at all temporary nuclear reactor and materials job sites and at the companies' corporate headquarters.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by MK and SGT of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing

request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to MK and SGT. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION



Frank Miraglia
Deputy Executive Director
For Reactor Programs

Dated at Rockville, Maryland
this 24th Day of September, 1999

Distribution
 NUDOCS
 PDR
 SECY
 CA
 WTravers, EDO
 FMiraglia, DEDR
 BBorchardt, OE
 JDyer, RIII
 BClayton, RIII
 SCollins, NRR
 DDambly, OGC
 Enforcement Coordinators
 RI, RII, RIV
 MStein, OE
 GCaputo, OI
 HBell, OIG
 EA File

*email from
 Vonne Orelaz
 with info...*

*per Chuck Vail
 Telephone*

OE <i>M.S.</i>	NRR	OGC - <i>NLC</i>	RIII	OE: D <i>(NM) for</i>	DEDR
MStein	SCollins	DDambly	JDyer	RWBorchardt	FMiraglia <i>MA</i>
9/14/99	9/15/99	9/15/99	9/14/99	9/17/99	9/12/99

G: MKORD.WPD



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

September 27, 1999

EA 98-081

MEMORANDUM TO: David L. Meyer, Chief
Rules Review and Directives Branch, ADM

FROM: R. W. Borchardt, Deputy Director
Office of Enforcement

A handwritten signature in cursive script that reads "R.W. Borchardt".

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
(Morrison Knudsen Corporation, Cleveland, Ohio)

A signed original of the subject order is attached for your transmittal to the Office of the Federal Register for publication. Additional conformed copies (5) of the Order and a disk are attached for your use.

Attachments: As Stated

cc: D. Dambly, OGC

Handwritten initials "B/25" in cursive script.

DISTRIBUTION:
RWBorchardt, OE
NMamish
Day File
EA File

PDR	NUDOCS	OE <i>(N.M.)</i>	D:OE <i>B</i>
<i>(YES)</i>	<i>(YES)</i>	NMamish	RWBorchardt
NO	NO	9/27/99	9/27/99

Doc Name: G:\fed99097.bs

October 19, 1999

Note: To File EA 98-081 MK Order

From: Mike Stein

RE: TIME REQUIREMENTS FOR POSTING ORDER

On Tuesday, October 19, 1999, I informed Pat Hickey, MK Counsel, after consultation with Bill Borchardt, at the end of the week of October 11, 1999, that it was acceptable to the NRC to have MK post the MK Order, issued on September 24, 1999, for a three month period. The posting period ends around Friday, December 17, 1999.

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