



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

Public
Template RGN-002

January 31, 2000

IA 99-055

Mr. Ross H. Stromberg
[HOME ADDRESS DELETED
PURSUANT 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-99-022)

Dear Mr. Stromberg:

Thank you for your response of December 19, 1999, to our Notice of Violation (Notice) issued on November 23, 1999, concerning your activities while employed at Tennessee Valley Authority's (TVA) Browns Ferry Nuclear Plant.

In summary, the NRC issued the Notice based on a random fitness for duty screening while you were employed by T. A. D. Resources, a subcontractor for General Electric, at the Browns Ferry Nuclear Plant in October 1998. The NRC concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. Specifically, 10 CFR 50.5(a)(2) prohibits any licensee, employee, or contractor of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. The NRC concluded that you deliberately adulterated your urine sample during a random drug screening on October 15, 1998, to avoid detection for illegal drug usage.

In your response, you denied that you deliberately adulterated your urine sample to avoid detection for illegal drug usage. You provided possible explanations for the presence of the adulterant potassium nitrite in your sample. This substance blocks the ability to detect substances indicating marijuana use through fitness for duty testing. The lack of proper control over your sample by TVA and a prolonged time period during which your sample was awaiting analysis (inferring that this afforded an opportunity for your sample to be adulterated) were among the possibilities you discussed. You also discussed several administrative irregularities and other observations regarding the processing of your sample. Because of these factors, you imply that your sample could have been adulterated by someone other than you. Your response also provided a brief work history while you were employed at Browns Ferry, and suggested that your random fitness for duty drug screening was in fact due to your involvement in certain activities at the plant.

The NRC has reviewed all the points in your response. After considering them, the NRC has determined that the points do not change the violation and the violation occurred as stated. The bases for our determination is summarized in the enclosure to this letter.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in

R. Stromberg

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the NRC Public Document Room (PDR). Because your response of December 19, 1999, did not provide the NRC with a sufficient basis for withdrawing the violation, a copy of the NRC's letter of November 23, 1999, transmitting the Notice, your response of December 19, 1999, to the Notice, and a copy of this letter, with your address and personal privacy information removed, will be placed in the PDR. Upon placement of these documents in the PDR, a copy of these letters will also be provided to TVA.

Questions concerning this letter may be addressed to Mr. Ken Barr, Chief, Plant Support Branch, Division of Reactor Safety, at 404-562-4653, or Mrs. Anne Boland, Enforcement Officer, Enforcement and Investigations Coordination Staff, at 404-562-4421.

Sincerely,

Original signed by B. Mallett

Luis A. Reyes
Regional Administrator

Enclosure: Evaluations and Conclusions

CERTIFIED MAIL NO. P 154 568 134
RETURN RECEIPT REQUESTED

cc: (see page 3)

R. Stromberg

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cc: w/encl w/HOME ADDRESS DELETED:

(HOLD FOR EICS ACTION)

Tennessee Valley Authority

Mr. J. A. Scalice

Chief Nuclear Officer and

Executive Vice President

6A Lookout Place

1101 Market Street

Chattanooga, TN 37402-2801

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EVALUATIONS AND CONCLUSIONS

Background

On October 14, 1999, the NRC's Office of Investigations (OI) completed an investigation of the facts and circumstances surrounding a random fitness for duty screening of you while you were employed by T. A. D. Resources, a subcontractor of General Electric, at the Tennessee Valley Authority's (TVA) Browns Ferry Nuclear Plant in October 1998. Based on the information developed during the investigation, on November 23, 1999, the NRC issued you a Notice of Violation (Notice). The NRC concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. Specifically, 10 CFR 50.5(a)(2) prohibits any licensee, employee, or contractor of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. The OI investigation concluded that you deliberately adulterated your urine sample during a random drug screening on October 15, 1998, to avoid detection for illegal drug usage. Your submittal of an adulterated sample was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness for Duty Programs.

On December 19, 1999, you responded to our Notice, denying that you deliberately adulterated your urine sample to avoid detection for illegal drug usage.

The following summarizes the NRC's assessment of your denial:

Restatement of Violation:

"10 CFR 50.5(a)(2) states, in part, that any employee or contractor of a licensee may not deliberately submit to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC.

Contrary to the above, on October 15, 1998, you deliberately submitted information (i.e., a urine sample in response to a random drug screening) which you knew to be inaccurate in some respect material to the NRC. Specifically, you submitted a urine sample that contained potassium nitrite, which blocks the ability to detect substances indicating marijuana use through fitness for duty testing. The human body does not produce potassium nitrite, and the identification of this substance at a concentration found in your urine sample is considered an attempt to subvert the fitness for duty test. The submittal of this sample was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness for Duty Programs. (01013)

This is a Severity Level III violation (Supplement VII)."

Summary of Individual's Response:

Your response begins by providing a brief work history while you were employed at Browns Ferry. You imply that the random drug test given to you was a result of the work you performed installing the Power Range Neutron Monitoring Modification. Following the work history discussion, you provided possible explanations for the presence of the adulterant potassium

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nitrite, which blocks the ability to detect substances indicating marijuana use through fitness for duty testing. The lack of proper control over the sample by TVA or the laboratory, and a prolonged time period in which your sample was awaiting analysis (inferring that this afforded an opportunity for the sample to be adulterated) were among the possibilities you discussed. Your response also documented several administrative irregularities and other observations, including: drug testing that was not designed to test for potassium nitrites, an improper signature by the Medical Review Officer (MRO) on the chain of custody form, TVA's decision to not perform an analysis of the split sample, and previous testing at Browns Ferry in which your creatinine level was below the facility cutoff level. Because of these and other reasons, you imply that your sample could have been adulterated by someone other than you. Lastly, you questioned the appropriateness of applying the Enforcement Policy which was issued on November 9, 1999 in your case, because the relevant events occurred in October 1998.

NRC Evaluation of Individual's Response:

In your response, you indicated that the random drug test given to you approximately four to five days after Unit 3 was put back online was a result of the work you performed installing the Power Range Neutron Monitoring Modification. NRC inspections and licensee Quality Assurance audits have reviewed the Fitness for Duty (FFD) program in-depth, including the selection process of random drug screens. There have been no findings to suggest that the licensee has manipulated the selection of individuals chosen for random drug testing. To accomplish such a result, numerous FFD and computer personnel all would have to act in collusion. A limited number of individuals have access to the FFD computer program, which draws randomly selected names of test subjects, and has an audit trail to those who enter the program. In addition, based on previous reviews of TVA's FFD program, the NRC has concluded the program to be effective.

You expressed concern that the sample bottle you took from a cardboard box was available to anyone, and provided an opportunity for an individual to tamper with the sample bottles. Based on the NRC's inspection experience, it is not unusual for sample bottles to be in a box and readily available. However, it would be unusual for the sample bottle not to be sealed in plastic. It is the responsibility of the donor to ensure that the chosen sample bottle is sealed in plastic prior to providing a sample. You have not indicated to us that the sample bottle you chose was not sealed. Previous FFD inspections have determined sample bottles to be satisfactorily sealed.

You also expressed a concern that the licensee does not notify the donor that testing for potassium nitrites may be conducted. Such notification by the licensee is not a regulatory requirement.

The Chain of Custody (COC) form you have referred to as Exhibit #1 would not show the sample arrival date at the laboratory. The copy that does document this date is maintained at the licensee's facility. Exhibit #2, a copy of the COC form, does show the specimen arrival date at the lab, as does the Clinical Reference Laboratory form (Exhibit #3). These forms reflect that October 16, 1998, was the date the lab received the sample in question. The initialed date of

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October 26, 1998, reflected on Exhibit #1, is the date that TVA entered the data into their computer system. This length of time is acceptable per NRC requirements.

In your response, you stated that the COC form reflected your test to be negative, then several days later was marked "canceled" and "test not performed." As indicated on the COC form, Step 8 is to be completed by the Medical Review Officer (MRO). On October 21, 1998, the MRO received the result of your drug test, and documented on Step 8 that the specimen had been adulterated. According to TVA procedures, the test was canceled since nitrites preclude the laboratory from testing for levels of drugs. Because of this determination by the MRO, Step 7 of the COC form was "lined through" on October 21, 1998, which is an accepted practice in the industry when laboratory personnel make an error or correction. In addition, the requirements specified in 10 CFR 26, Appendix A, Section 2.7(g)(1) state that Health and Human Service (HHS) certified labs have five working days after receipt of the specimen to report the results to the MRO. The reporting of your results was timely and within regulatory requirements.

With respect to your statement that your sample showed a low creatinine level, once potassium nitrites were discovered in your specimen, the licensee was under no NRC requirement to expend resources on an observed test. The issue concerning your low creatinine level is therefore moot and would not be considered since the sample had been adulterated by potassium nitrites. The fact that TVA did not test the split of your sample is also not required by the NRC. Licensees are not required to test a split sample after the initial sample has been determined to be adulterated.

You indicated that potassium nitrites are present in HHS certified laboratories and that your sample may have been tampered with during the five days it was at the laboratory. The NRC, other federal agencies, and licensees perform audits at HHS certified laboratories on a frequent basis. The NRC is unaware of any findings that would suggest that samples have been tampered with at this HHS certified laboratory.

With respect to the cropduster's spray over your home as a possible explanation as to how potassium nitrites could have been present in your sample; this is highly improbable, particularly in light of the concentration present in your sample. Also, the fact that you have Hepatitis-C and previously worked in the Hydrochloride Building at TVA, are neither sufficient nor reasonable explanations for the presence of potassium nitrites in your sample. The concentration of potassium nitrite that was present in your sample was much greater than that possibly arising from all other sources, either internal or external. It is not possible to attain such concentrations other than by intentional adulteration.

Lastly, you indicated that the application of an Enforcement Policy issued on November 9, 1999, to your case is inappropriate in that the events surrounding the violation occurred in October 1998. Although it might appear that the November 1999 Policy would not apply in your case; it is the operative document. As a matter of Agency practice, when a revision is issued to the Enforcement Policy, all subsequent actions are assessed against the new standard, unless application of the prior Policy would result in a more favorable (lesser) sanction against the

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individual or the licensee. In this case, the application of the November 1999 Enforcement Policy and the May 1998 Enforcement Policy (the previous revision), resulted in the same sanction.

Conclusion:

The NRC concluded that the violation occurred as stated.

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