

November 23, 1999

IA 99-054

Mr. John D. Tipton
[HOME ADDRESS REMOVED
PER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-99-023)

Dear Mr. Tipton:

This letter refers to an NRC Office of Investigations (OI) investigation completed on October 15, 1999. During this investigation, the NRC examined the facts and circumstances surrounding a random fitness for duty screening while you were employed by Stone and Webster at the Tennessee Valley Authority's (TVA) Watts Bar Nuclear Plant in November 1998. You were interviewed on September 10, 1999, by OI as part of the investigation. A copy of the synopsis to the OI report is enclosed.

Based on the information developed during the investigation, the NRC concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. Specifically, 10 CFR 50.5(a)(2) prohibits any licensee, employee, or contractor of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. The OI investigation concluded that you deliberately adulterated your urine sample during a random drug screening on November 9, 1998, to avoid detection for illegal drug usage. A second sample was subsequently taken, which indicated a positive result for an illegal drug. Your submittal of an altered or substituted sample was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness for Duty Programs. After identification of your deliberate actions, the licensee took appropriate corrective actions to deny your unescorted access privilege to the facility.

During your OI interview, you denied the use of illegal drugs or that you attempted to subvert the fitness for duty testing program while employed at the Watts Bar Nuclear Plant. In addition, your signature on the Drug Testing Custody and Control Form during the random drug testing of November 9, 1998, certified that you provided your urine specimen and did not adulterate it in any manner. Nonetheless, based on discussions with the licensee's Medical Review Officer (MRO), your first urine sample temperature was discovered to be outside the acceptable range, indicating that either water was added to the sample or the sample was substituted with one having no evidence of drugs. Laboratory testing of the second urine sample submitted under direct observation indicated a positive result for an illegal drug. TVA concluded that your actions represented an attempt to subvert the fitness for duty test.

The NRC and its licensees must be able to rely on the integrity and trustworthiness of employees, especially those in a supervisory capacity. Your attempt to subvert TVA's fitness for duty program is unacceptable behavior in the nuclear industry. Given your responsibilities as a foreman for Stone and Webster at the Watts Bar facility, your actions were particularly egregious because they indicated a deliberate lack of regard for NRC requirements. Therefore, after consultation with the Director, Office of Enforcement, the NRC has decided to issue the enclosed Notice to you based on your violation of regulations regarding deliberate misconduct. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement

Actions" (Enforcement Policy), 64 *Federal Register* 61141, issued on November 9, 1999, the violation has been classified at Severity Level III. Copies of the applicable regulation and Enforcement Policy are enclosed for your reference.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of the significant action already taken by the licensee against you. You should be aware that should there be evidence of similar conduct on your part in the future, you may be subject to further enforcement action that could include an order prohibiting your involvement in NRC-licensed activities for a term of years.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, please include in your response information regarding why, in light of your actions in November 1998, the NRC should have confidence that you will adhere to regulatory requirements should you be employed in the nuclear industry in the future. If you believe any information concerning this matter is inaccurate, if you wish to provide additional information that you believe is important to our full understanding of this matter, or if you contest the violation, please include this in your response.

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 the NRC Public Document Room (PDR). A copy of this letter, with your address removed, and your response will be placed in the Public Document Room (PDR) 45 days after the date of this letter unless you provide sufficient basis to withdraw this letter. Upon placement of these documents in the PDR, a copy of this enforcement action 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 L. A. Reyes

Luis A. Reyes
Regional Administrator

Enclosures:

1. Notice of Violation
2. Synopsis to OI Report No. 2-99-023
3. 10 CFR 50.5, Deliberate Misconduct
4. Enforcement Policy

CERTIFIED MAIL NO. Z 353 112 072
RETURN RECEIPT REQUESTED

cc: w/encls 1 and 2 only w/HOME ADDRESS DELETED:
(HOLD FOR 45 DAYS - 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

NOTICE OF VIOLATION

Mr. John D. Tipton

IA 99-054

During an NRC Office of Investigations investigation completed on October 15, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," 64 *Federal Register* 61142, issued November 9, 1999, the violation is listed below:

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 November 9, 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 deliberately altered or substituted your urine sample during a random drug screening as indicated by a urine temperature that was outside the acceptable range. These actions were taken to subvert the fitness for duty test and avoid detection for illegal drug usage. A second sample was subsequently taken which indicated a positive result for an illegal drug. The submittal of these samples 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).

Pursuant to the provisions of 10 CFR 2.201, John D. Tipton is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, Atlanta Federal Center, 61 Forsyth St., SW, Suite 23T85, Atlanta, Georgia, 30303, marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Because your response will be placed in the NRC Public Document Room (PDR) unless you provide sufficient basis to withdraw this letter, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 23rd day of November 1999

ENCLOSURE 1

SYNOPSIS

The U.S. Nuclear Regulatory Commission, Office of Investigations, Region II, initiated this investigation on August 18, 1999, to determine whether a Stone and Webster contract employee at the Tennessee Valley Authority Watts Bar Nuclear Plant attempted to subvert the fitness for duty testing program by adulterating his urine sample.

Based on the evidence developed during the investigation, it was substantiated that the contractor intentionally and deliberately adulterated his urine sample to avoid detection for illegal drug usage.

NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF Approved on
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION II 11/16/99

Case No. 2-1999-023

1

Enclosure 2

Distribution w/ encls 1 and 2 only [HOME ADDRESS REMOVED]:

IMMEDIATE DISTRIBUTION

OE:EA File (BSummers, OE)
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RBorchardt, OE
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RELEASE AFTER 45 DAY HOLD- EICS ACTION

WTravers, EDO
FMiraglia, DEDR
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Enforcement Coordinators
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THIS ACTION MAY NOT BE RELEASED TO THE PDR OR OUTSIDE THE AGENCY WITHOUT THE APPROVAL OF THE OFFICE OF ENFORCEMENT

Distribution w/ encls [HOME ADDRESS]

ABoland, RII

*02 per T. Reis
11/23/99
e-mail*

** SEE PREVIOUS*

SEND TO PUBLIC DOCUMENT ROOM?		RELEASE AFTER 45 DAY HOLD- EICS ACTION					
OFFICE	RII:DRP	RII:ORA	RII:EICS	RII:DRS	OI	RII:ORA	
Signature	<i>*</i>	<i>NLD cke</i>	<i>[Signature]</i>	<i>vmm</i>	<i>*</i>	<i>[Signature]</i>	
NAME	LPLISCO	CEVANS	ABOLAND	BMALLETT	WMCNULTY	JJOHNSON	
DATE	1 / 199	11 / 23 / 199	11 / 23 / 199	11 / 23 / 199	1 / 199	11 / 23 / 199	
COPY?	YES NO	YES <input checked="" type="radio"/> NO	<input checked="" type="radio"/> YES NO	YES <input checked="" type="radio"/> NO	YES . NO	YES <input checked="" type="radio"/> NO	

OFFICIAL RECORD COPY DOCUMENT NAME:M:\ENFORCE\99CASES\99282wbn.dir\ia99054.wpd

** See previous concurrence*

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Signature	<i>[Signature]</i>	<i>[Signature]</i>		<i>[Signature]</i>	<i>[Signature]</i>		
NAME	LPLUSCO	CEVANS	ABOLAND	BMALLETT	WMCNULTY	JJOHNSON	
DATE	11/15/99	11/16/99	1/199	11/16/99	11/16/99	1/199	
COPY?	YES <input type="radio"/> NO <input checked="" type="radio"/>	YES <input checked="" type="radio"/> NO <input type="radio"/>	YES <input type="radio"/> NO <input type="radio"/>	YES <input checked="" type="radio"/> NO <input type="radio"/>	YES <input type="radio"/> NO <input type="radio"/>	YES <input type="radio"/> NO <input type="radio"/>	