

September 20, 2000

IA-00-026

Mr. David J. Understahl
[ADDRESS DELETED
UNDER 10 CFR 2.790(a)]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORTS
NO. 3-1998-037 AND 3-1998-037S)

Dear Mr. Understahl:

This letter is in reference to information provided to the U.S. Nuclear Regulatory Commission (NRC) by the Commonwealth Edison Company (ComEd) that you provided an adulterated urine specimen while undergoing NRC-required fitness for duty (FFD) testing at the ComEd Braidwood Nuclear Power Plant. The NRC Office of Investigations (OI) conducted an investigation into this matter and a summary of the OI report was an enclosure to our letter to you dated May 22, 2000. The letter offered you the opportunity to meet with the NRC staff in a predecisional enforcement conference or to provide a written explanation to the NRC concerning the apparent violation of NRC requirements. On June 12, 2000, you contacted the NRC Region III office and indicated that you did not want to meet with the NRC staff in a predecisional enforcement conference and that you would not be submitting a written explanation.

Based on the results of the OI investigation, it was determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice). The OI investigation determined that on September 9, 1998, you were employed as an ironworker by the Bechtel Corporation at ComEd's Braidwood Nuclear Power Plant and provided a urine specimen for the FFD program. At that time, you signed a ComEd drug testing control form certifying that your urine specimen was not adulterated. Subsequent laboratory examination of your urine specimen determined that it was adulterated. In your interview with OI on March 3, 1999, you admitted purchasing an adulterating agent and placing it in your urine specimen. By signing the ComEd drug testing control form and certifying that your urine specimen was not adulterated, you provided incomplete and/or inaccurate information which is material to the NRC since the information is used to demonstrate compliance with 10 CFR Part 26, "Fitness for Duty Programs," and is a violation of 10 CFR 50.5(a)(2), "Deliberate Misconduct." The violation is categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600 (Enforcement Policy) at Severity Level III.

The NRC staff considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, the NRC has decided to issue the enclosed Notice of Violation after considering that ComEd revoked your access to the Braidwood plant

and Bechtel terminated your employment. However, you should be aware that any future violation on your part may result in a more significant enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether future enforcement action is necessary to ensure compliance with regulatory requirements.

Please feel free to contact Mr. James R. Creed of the NRC Region III Security Staff if you have any questions. Mr. Creed can be reached at telephone number (630) 829-9500.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS) accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html>.

Sincerely,

/RA/

J. E. Dyer
Regional Administrator

Dockets No. 50-456; 50-457
Licenses No. NPF-72;NPF-77

Enclosure: Notice of Violation

cc w/encl: O. Kingsley, ComEd

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DOCUMENT NAME: G:\eics\00-026 IA SL III.wpd

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Enforcement Coordinators

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GCaputo, OI

RPaul, OI:RIII

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OAC:RIII

NOTICE OF VIOLATION

Mr. David J. Understahl
[Address Deleted]
Under 10 CFR 2.790(a)]

Dockets No. 50-456; 50-457
IA-00-026

During an NRC investigation completed on March 27, 2000, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

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

10 CFR 26.20 requires that licensees establish and implement written procedures to meet the general performance objectives and specific requirements of 10 CFR Part 26, "Fitness for Duty Programs." 10 CFR Part 26, Appendix A, Section 2.4(d) requires that a licensee maintain a chain of custody for each FFD test specimen.

The Commonwealth Edison Company's (ComEd) "Drug Testing and Control Form" is the chain of custody for each FFD specimen collected at an NRC-licensed facility and by signing the form the specimen donor certifies "the specimen identified on this form is my own; that it is fresh and has not been adulterated in any manner, and that the certification information provided on this form and on the collection bottle is correct."

Contrary to the above, on September 9, 1998, while you were employed as an ironworker by the Bechtel Corporation, a contractor at the ComEd Braidwood Nuclear Station, you provided a urine specimen under the NRC-required fitness for duty program and you signed the ComEd Drug Testing and Control Form certifying that your fitness for duty test specimen was not adulterated. Subsequent laboratory analysis of your urine specimen determined that it had been adulterated. By signing the ComEd Drug Testing and Control Form you submitted incomplete or inaccurate information to the licensee. This information is material to the NRC because it is used to demonstrate compliance with 10 CFR Part 26. (01013)

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

Pursuant to the provisions of 10 CFR 2.201, Mr. David J. Understahl is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector at the Dresden Nuclear Station, 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 for each violation:

(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. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. 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 other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available to the Public, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public 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 20th day of September 2000.