

April 6, 2001

IA-01-024

Mr. Michael Mennucci
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: OFFICE OF INVESTIGATIONS REPORT 3-2000-029

Dear Mr. Mennucci:

This letter refers to an investigation by the NRC Region III Office of Investigations (OI) completed on February 27, 2001. A summary of the OI report is provided as Enclosure 1. The OI investigation concluded that you had falsified information on a corrective action document (Condition Report (CR) No. CPAL-99-0638). The CR documented a noncompliance identified by NRC inspectors during a routine inspection of the radioactive material shipping program (Non-Cited Violation (NCV) No. 50-255/99006-01). On the CR, you signed and dated a completion block (signed and dated on January 25, 2000) indicating that three radioactive material shipping procedures had been revised. However, one procedure had not been revised until February 23, 2000, and another of the named procedures remained unrevised until July 14, 2000. OI concluded that your actions were a deliberate violation of 10 CFR 50.5, Deliberate Misconduct (Enclosure 2).

10 CFR 50.5 states, in part, that an employee of a licensee may not deliberately submit to a licensee information that the employee submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. During the interview with OI you indicated that you had been aware that two of the three procedures identified in CR No. CPAL-99-0638 had not been revised when you signed and dated the completion block on the CR. By signing and dating the completion block you knowingly provided the licensee with inaccurate information, an apparent violation of 10 CFR 50.5.

At this time, the NRC is considering whether to take enforcement action against you for violating the NRC regulation against engaging in deliberate misconduct, 10 CFR 50.5. However, before the NRC makes its enforcement decision, we are providing you an opportunity to either provide a written response to the apparent violation addressed above, under oath or affirmation, within 30 days of the date of this letter or request a predecisional enforcement conference within seven days of the date of this letter. If the NRC concludes that you engaged in deliberate misconduct, the possible sanctions available to the NRC include issuing to you a

⊛⊛⊛ **NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF THE DIRECTOR, OE** ⊛⊛⊛

Notice of Violation, a civil monetary penalty¹, or an order. If the NRC issues an order to you, the order may prohibit your future involvement in NRC-licensed activities.

You may choose to respond by letter or request a predecisional enforcement conference. Should you choose to request a conference or reply in writing, you are specifically invited to address the factors that the NRC normally considers in determining whether enforcement action should be taken against an individual. These factors are described in Section VIII, "Enforcement Actions Involving Individuals," of the NRC Enforcement Policy (Enclosure 3). In addition to responding to these factors, should you admit the violation, the NRC requests that you provide in your written response or present in a predecisional enforcement conference, why the NRC should be confident that in the future, while engaged in licensed nuclear activities, you will abide by the NRC's regulations.

Please contact Mr. Gary Shear of my staff at telephone number (630) 829-9876 within seven days of the date of this letter to notify the NRC of your intentions. Any questions you may have about this matter can also be addressed to Mr. Shear.

Please be advised that if you choose a predecisional enforcement conference, it will be transcribed and held at the NRC Region III office in Lisle, Illinois. Further, your cost of transportation to Region III must be paid by you. Also, you are welcome to have counsel or a personal representative accompany you to an enforcement conference or assist you in preparing your written response, if you choose that option. However, the cost of any such counsel or personal representative and their transportation costs must likewise be paid by you.

A written response, should you choose to provide one, shall be clearly marked as a "Response to an Apparent Violation, IA-01-024" and submitted to the Regional Administrator, U. S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Suite 255, Lisle, IL 60532-4351, with a copy to Mr. Brent Clayton, NRC Region III Enforcement Officer, at the same address. At the same time, a copy shall be sent to Mr. F. J. Congel, Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852-2738.

To the extent possible, any response should not include any personal privacy or proprietary information, so that its placement in the NRC Public Electronic Reading Room (PERR) can be done without redacting any information. If personal privacy information 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 of your claim for withholding (*e.g.*, explain why the

¹ A civil penalty is not normally imposed on unlicensed individuals. See Footnote 9 in Section VIII, "Enforcement Actions Involving Individuals," of the NRC Enforcement Policy.

disclosure of the information will create an unwarranted invasion of personal privacy or provide the information required, as well as an affidavit, as required by 10 CFR 2.790(b), to support a request for withholding confidential commercial or financial information).

The NRC will delay deciding whether to place a copy of this letter into the PERR until a final enforcement decision has been made. At that time, in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your written response, should you choose to provide a written reply, with your home address removed, may be placed in the PERR link at the NRC homepage, <http://www.nrc.gov/NRC/ADAMS/index.html>.

Sincerely,

/RA/

John A. Grobe, Director
Division of Reactor Safety

Enclosures: 1. OI Summary
2. 10 CFR 50.5
3. NRC Enforcement Policy

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Sincerely,
/RA/

John A. Grobe, Director
 Division of Reactor Safety

- Enclosures: 1. OI Summary
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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Distribution with Enclosure 1

D. Dambly, OGC M. Rafky, OGC
 T. Reis, NRR F. Congel, OE
 C. Nolan, OE W. Kane, DEDRP
 OE (IA)

* See Previous Concurrence

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² OE concurrence received from C. Nolan, OE, on April 2, 2001

Enclosure 1

SUMMARY OF OFFICE OF INVESTIGATIONS REPORT 3-1999-003

Condition Report (CR) No. CPAL-99-0638 documented a noncompliance identified by NRC inspectors during a routine inspection of the radioactive material shipping program (Non-Cited Violation (NCV) No. 50-255/99006-01). In the CR, three procedures were assessed to be inadequate and each needed review and revision. On January 25, 2000, the CR completion block was signed and dated indicating that all three radioactive material shipping procedures had been revised. However, the Nuclear Performance Assessment Department discovered during an audit that one procedure had not been revised until February 15, 2000, and another of the named procedures remained unrevised.

On July 10, 2000, an investigation was initiated to determine if the person responsible for signing and dating the completion block, the Radioactive Materials Supervisor (RMS) at Palisades Nuclear Plant, had provided, in the CR, false information to the licensee in violation of 10 CFR 50.5. Specifically, the investigation was to determine if the RMS had deliberately falsified the CR by signing and dating the completion block.

Based on the evidence developed during the investigation and a review of the investigation conducted by the licensee, it was determined that an RMS at Palisades Nuclear Plant deliberately provided false information in a CR in violation of 10 CFR 50.5, by signing the completion block on the document while knowing the required actions were not complete.

Enclosure 2

10 CFR 50.5

§50.5 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

[56 FR 40690, Aug. 15, 1991]