

June 1, 2001

EA-01-073

Ms. Carlene Fregeolle
Director of Human Resources
Crane Nuclear Inc.
2825 Cobb International Blvd,
Kennesaw, GA 30152-4352
Phone: (770)429-4600

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE
(OFFICE OF INVESTIGATIONS REPORT NO. 3-1999-016)

Dear Ms. Fregeolle:

This letter refers to an investigation conducted by the U. S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) to determine whether Crane Nuclear Incorporated (Crane), an American Electric Power Company (AEP) contractor at the D. C. Cook Nuclear Power Plant, discriminated against two mechanical maintenance technicians in violation of 10 CFR 50.7. We are also concerned that this apparent violation may involve deliberate misconduct.

Based on the information developed during the OI investigation, it appears that on February 10, 1999, Crane may have caused AEP to violate 10 CFR 50.7. Specifically, two mechanics employed by Crane refused to work a package based on an expressed concern that they would be violating plant or NRC requirements if they worked the package as written. The two mechanics told their immediate supervisor that the work package could not be completed unless additional work instructions were added. The supervisor and one mechanic spoke with the project coordinator who informed them that the package could be worked with "skill of the craft." The mechanic again refused to work the package unless the package was rewritten. The project coordinator terminated the two mechanics for refusing to work the package as written. The two mechanics engaged in protected activity, adverse action was taken against them by Crane, and retaliation for having engaged in the protected activity was a factor in the adverse actions. Therefore, an apparent violation of 10 CFR 50.7 is being identified to Crane Nuclear, as well as to the licensee. A copy of the synopsis from the OI report and a factual summary of the apparent 10 CFR 50.7 violation are enclosed with this letter.

This apparent violation of 10 CFR 50.7 is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation described in this letter may change as a result of further NRC review.

A predecisional enforcement conference to discuss this apparent violation has been scheduled for Tuesday, July 24, 2001, 9 a.m. to 5 p.m., at the NRC Region III office, 801 Warrenville Road, Lisle, IL, 60532.

The conference will be closed to public observation in accordance with Section V of the Enforcement Policy and will be transcribed. We request that a specified Crane representative attend the conference.

The NRC's Enforcement Policy permits individuals who were subjects of the apparent discrimination to participate in the conference. Accordingly, the two mechanics will be invited to attend the conference. The mechanics may participate by observing the conference and if desired, following the presentations by AEP and Crane, the mechanics may make a presentation to address their views on why they believe discrimination occurred and on the previous presentations. Both AEP and Crane will then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances will the NRC staff permit AEP, Crane, or the mechanics to cross-examine or question each other.

The decision to hold an enforcement conference does not mean that the NRC has made a final determination on enforcement action in this case. This conference is being held to obtain information to enable the NRC to make an enforcement decision, such as a common understanding of the facts, root cause, significance of the issue, and plans for lasting and effective corrective action. In particular, we expect you to address: (1) Crane's position on the apparent violation, the basis for this position, and the reasons for the apparent violation; (2) any involvement by Crane officials or employees as related to this apparent violation; and (3) the details and results of any investigation that Crane may have conducted into this matter. In addition, the conference is an opportunity for Crane to point out any error in our findings and for you to provide perspectives on: (1) the severity level of the apparent violation; (2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.C of the Enforcement Policy; and (3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

Further information about NRC regulations and policies related to enforcement are available at the NRC Web site: <http://www.nrc.gov/nrc.html> or the Office of Enforcement's home page: <http://www.nrc.gov/OE/>

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter **with Enclosures 1 - 5 only** 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/

John A. Grobe, Director
Division of Reactor Safety

- Enclosures:
1. Synopsis of OI Report
 2. "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600
 3. 10 CFR 50.5
 4. 10 CFR 50.7
 5. Direction to Region III

EXEMPT FROM PUBLIC DISCLOSURE

6. Summary of OI Report

cc w/o encl: R. P. Powers, American Electric Power Co.

cc w/encl: M. Denis, Attorney

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter **with Enclosures 1 - 4 only** 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/

John A. Grobe, Director
Division of Reactor Safety

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NAME	PLougheed:jb		JJacobson		RPaul			
DATE	05/22/01		05/22/01		05/18/01		05/21/01	
OFFICE	D:OE via email	Y	RIII		RIII			
NAME	BWestreich for FCongel		BClayton		JGrobe			
DATE	05/25/01		05/25/01		06/01/01			

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No legal objection received from **G. Longo**, OGC, on 05/21/2001.

Concurrence received from **B. Westreich**, OE, on 05/25/2001.

NRC Distribution w/o encl:

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Enclosure 1

SYNOPSIS

This supplemental investigation was initiated by the U. S. Nuclear Regulatory Commission, Office of Investigations, Region III, on August 2, 1999, to determine whether a contract mechanical maintenance technician (MMT) was discriminated against when terminated from the D. C. Cook Nuclear Power Plant after being directed to and refusing to falsify maintenance records. Additionally, it was alleged that the technician had been directed to falsify maintenance records.

Based upon the evidence developed during this investigation, it was concluded that the MMT was deliberately discriminated against after the contract Project Manager terminated the MMT's employment after the MMT refused to sign off on an incomplete work package for maintenance on a containment pump.

Based upon the determination that the maintenance records, which the Craft Supervisor directed the MMT to rewrite or sign off on, were not safety-related and consequently have no regulatory significance, there was insufficient evidence to substantiate the allegation regarding falsification of records.

Enclosure 3

§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.

Enclosure 4

§50.7 Employee protection

- (a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and, in general, are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.
- (1) The protected activities include but are not limited to:
- (i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;
 - (ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;
 - (iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;
 - (iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.
 - (v) Assisting or participating in, or is about to assist or participate in, these activities.
- (2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.
- (3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.
- (b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

- (c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for --
 - (1) Denial, revocation, or suspension of the license.
 - (2) Imposition of a civil penalty on the licensee or applicant.
 - (3) Other enforcement action.
- (d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by non-prohibited considerations.
- (e)
 - (1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.
 - (2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by calling the NRC Information and Records Management Branch at (301) 415 - 7230.
- (f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

Enclosure 5

DIRECTIONS TO REGION III

U.S. Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, IL 60532-4351

Switchboard Telephone Number: 630-829-9500

Switchboard Hours: 7 a.m. to 4:45 p.m., Monday through Friday (Central Time)

Directions

From O'Hare Airport

1. Exit the airport toward the city.
2. Take Interstate 294 south, towards Indiana (a 40-cent toll is required just after entering Interstate 294).
3. Exit onto Interstate 88 west (Aurora/Iowa).
4. Proceed west on Interstate 88, past another 40-cent toll, to Illinois Highway 53 south (the second Illinois Highway 53 exit).
5. Move immediately to the left lane and turn left at the first traffic light intersection (Warrenville Road).
6. Proceed through two traffic light intersections and past a duck pond on the right.
7. Turn in at the next drive "Arboretum Lakes." There is no traffic light at this intersection.
8. Bear to the right to reach the 801 Warrenville Road building with a parking garage across the drive. The upper level of the parking garage is publically accessible - no key card required.
9. The Region III office reception area is on the second floor. However, on the day of the conference you may proceed directly to the 3rd floor and follow the signs directing you to the conference room.

From Midway Airport

1. Turn left (north) on Cicero Avenue when exiting the airport.
2. Proceed north to Interstate 55 west, which is a left turn after passing under the interstate.
3. Take Interstate 55 west to Interstate 355, toward the western suburbs.
4. There is one 50-cent toll upon entering Interstate 355.
5. Exit west onto Ogden Avenue, turning left under the interstate.
6. Turn right almost immediately on Ivanhoe Rd (Gas Station on NW corner of intersection)
7. Go one block and turn left on Warrenville Rd
8. Turn into second left turn lane - first set of green buildings "Arboretum Lakes"
9. Bear to the right to reach the 801 Warrenville Road building with a parking garage across the drive. The upper level of the parking garage is publically accessible - no key card required.
10. The Region III office reception area is on the second floor. However, on the day of the conference you may proceed directly to the 3rd floor and follow the signs directing you to the conference room.

From Downtown Chicago

1. Take the Eisenhower Expressway, Interstate 290 west.
2. Take the left exit at Interstate 88 west (towards Aurora).
3. Proceed on Interstate 88 past a 40-cent toll to the Illinois 53 south exit (the second Illinois Highway 53 exit).
4. Move immediately to the left lane and turn left at the first traffic light intersection (Warrenville Road).
5. Proceed through two traffic light intersections and past a duck pond on the right.
6. Turn in at the next drive "Arboretum Lakes." There is no traffic light at this intersection.
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