

October 22, 2002

IA-02-041

Mr. David J. DiProspero
[HOME ADDRESS REMOVED
PER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC Office of Investigations Report 1-2002-024)

Dear Mr. DiProspero:

This letter refers to an investigation completed by the NRC Office of Investigations (OI) on September 12, 2002. This investigation was conducted to determine whether you deliberately submitted an adulterated urine sample on May 18, 2002, during a random drug screen examination while employed as a security lieutenant by Wackenhut Corporation at the R. E. Ginna Nuclear Power Plant.

Rochester Gas & Electric (RG&E) investigated the circumstances regarding your random fitness for duty test when the laboratory responsible for analyzing the urine sample notified RG&E's Medical Review Officer (MRO) that the pH level of your sample was low (2.73 vs. the normal range of 5 - 7). As a result, you met with the MRO to discuss the matter. You denied taking any drugs and stated that the abnormally low pH value of your urine sample was caused by taking nutrient supplements. The MRO requested you to provide written medical documentation to support your claim, which you were not able to furnish. Consequently, after reviewing all the facts, the MRO concluded that you had adulterated your urine sample and RG&E subsequently terminated your employment.

You were interviewed by OI via telephone on July 24, 2002, as part of the NRC investigation. During your interview, you denied that you: (1) adulterated your urine sample; (2) poured anything into your urine sample; or (3) attempted to alter or hide the results in any way when you submitted a urine sample for a random FFD test. You also denied taking illegal drugs. You stated that two weeks prior to the FFD test, you began using several nutrient supplements as part of a weight training program. It is your assertion that nutrient supplements caused your urine to have an abnormally low pH even though you were not able to provide supporting information to RG&E's MRO.

As part of the NRC investigation, the investigator consulted a subject matter expert in this area. The expert, a forensic toxicologist employed by the United States Department of Health and Human Services, Center for Substance Abuse Prevention, Division of Workplace Programs, indicated that there is no scientific evidence to support your claim that taking nutrient supplements caused your urine's pH to be below 3. In the professional opinion of the forensic toxicologist, the urine sample had to have been adulterated to produce such an abnormally low

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pH. Therefore, based on the evidence developed during the investigation, OI concluded that you submitted an adulterated urine sample on May 18, 2002, and deliberately and knowingly created a false document when you signed a Ginna fitness for duty (FFD) form that you had not, in any way, adulterated your urine sample.

Based on the results of the OI investigation, the NRC concluded that you were in violation of the NRC's rule prohibiting deliberate misconduct, 10 CFR50.5(a)(2). This rule, in part, prohibits any employee of a licensee from deliberately submitting to the licensee, information that the person knows to be inaccurate in some respect material to the NRC. Specifically, you deliberately submitted information (i.e., an adulterated urine sample and an FFD form) to the licensee that you knew to be inaccurate. Your submittal of this false information was material to the NRC because random FFD drug testing is required by NRC regulations in 10 CFR 26, "Fitness For Duty Programs." This program is one of the means by which licensees and the NRC assure that nuclear workers are not under the influence of any substance, legal or illegal, which adversely affects their ability to competently and safely perform their duties. A copy of the letter to the licensee concerning this matter, with an attached synopsis of the OI Investigation, is enclosed.

The NRC and its licensees must be able to rely on the integrity and trustworthiness of employees. Your attempt to subvert the licensee's FFD program is unacceptable behavior in the nuclear industry. As a first line supervisor, you were in a position to direct or influence the conduct of other licensee employees. As such, your actions, which demonstrated a deliberate disregard for NRC requirements, were particularly egregious. Therefore, after consultation with the Director, Office of Enforcement, the NRC has decided to issue the enclosed Notice of Violation (Notice) to you based on your violation of NRC regulations regarding deliberate misconduct. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," (NUREG-1600), this violation has been classified at Severity Level III. You should be aware that if there is similar conduct on your part in the future, you may be subject to further enforcement action that could possibly include an Order prohibiting your involvement in NRC licensed activities for a specific period of time. A violation of 10 CFR 50.5 may also lead to criminal prosecution. The NRC considered issuance of an Order in this case, but decided instead, to issue the attached Notice of Violation because Rochester Gas & Electric already took disciplinary action against you.

You are required to respond in writing within 30 days of the date of 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 May 2002, the NRC should have confidence that you will adhere to regulatory requirements (including those for submitting accurate information to licensees and those regarding 10 CFR Part 26 - "Fitness For Duty Programs") 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 made publicly available. A copy of this letter, with your address removed, and your response will be made publicly available 45 days after the date of this letter unless you provide sufficient basis to

Mr. David DiProspero

3

withdraw this letter. A copy of this enforcement action will also be provided to Rochester Gas and Electric Company at that time. Questions concerning this matter may be addressed to Mr. John White, Chief, Radiation Safety and Safeguards Branch, Division of Reactor Safety, at 610-337-5114.

Sincerely,

/RA/ James T. Wiggins Acting For

Hubert J. Miller
Regional Administrator

Enclosures: 1) Notice of Violation
2) Letter to Licensee (with OI synopsis attached)

cc w/encl 1 only (HOLD FOR 45 DAYS):

Dr. Robert C. Mecredy
Vice President, Nuclear Operations
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, NY 14649

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* Per e-mail from D. Nelson (OE)

NOTICE OF VIOLATION

Mr. David DiProspero
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(a)]

IA-02-041

During an investigation by the NRC Office of Investigations completed on September 12, 2002, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.5(a)(2) states, in part, that any employee 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 May 18, 2002, you deliberately submitted information (i.e., a urine sample in response to a random fitness for duty drug screen and a signed fitness for duty form) which you knew to be inaccurate in some respect material to the NRC. Specifically, you deliberately altered your urine sample during a random drug screen in an effort to subvert the fitness for duty test and signed a form indicating that you had not, in any way, adulterated your urine sample. The submittal of this information was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, "Fitness for Duty Programs."

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

Pursuant to the provisions of 10 CFR 2.201, David DiPropsero is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 475 Allendale Road, King of Prussia, PA, 19406, and 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, (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.

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 electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), 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. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). 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 22nd day of October 2002

October 22, 2002

EA-02-208

Dr. Robert C. Mecredy
Vice President, Nuclear Operations
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, NY 14649

Subject: NRC OFFICE OF INVESTIGATIONS REPORT 1-2002-024

Dear Mr. Mecredy:

This letter refers to an investigation completed by the NRC Office of Investigations (OI) on September 12, 2002. This investigation was conducted to determine whether a contract security department lieutenant employed by Wackenhut at your R. E. Ginna facility, deliberately submitted an adulterated urine sample on May 18, 2002, during a random drug screen examination. The investigation was initiated after you identified the misconduct, investigated the matter, and terminated the employment of the individual. Based on the evidence developed during our investigation, OI concluded that the lieutenant submitted an adulterated urine sample on May 18, 2002, and deliberately created a false document when the lieutenant signed a Ginna fitness for duty (FFD) form indicating that the lieutenant had not, in any way, adulterated the urine sample. A synopsis from the investigative report is enclosed.

With respect to this matter, you took corrective measures in accordance with your policies, procedures, the requirements of your FFD program, and 10 CFR Part 26 regulations. You identified that the urine sample was adulterated, performed an investigation of this matter, and subsequently terminated the supervisor's employment.

Based on the above, the NRC has determined that you properly implemented your Part 26 program concerning this matter, and no further action by the NRC is warranted. Therefore, no response to this letter is required. Regarding the contract security department lieutenant, the NRC is considering appropriate action to address the apparent deliberate act. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Reading Room).

Sincerely,

/RA/ James T. Wiggins Acting For

Hubert J. Miller
Regional Administrator

Docket No. 50-244
License No. DPR-18

Dr. Robert C. Mecredy

2

Enclosure: OI Synopsis

cc w/encl: P. Wilkens, President, Rochester Gas and Electric Corporation
P. Eddy, Electric Division, Department of Public Service, State of New York
C. Donaldson, Esquire, State of New York, Department of Law
N. Reynolds, Esquire
W. Flynn, President, New York State Energy Research and Development Authority
J. Spath, Program Director, New York State Energy Research and Development
Authority
D. Stenger, Ballard Spahr Andrews and Ingersoll. LLP
T. Wideman, Director, Wayne County Emergency Management Office
M. Meisenzahl, Administrator, Monroe County, Office of Emergency Preparedness
T. Judson, Central New York Citizens Awareness Network

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* Per e-mail from D. Nelson (OE)

Enclosure

SYNOPSIS

On June 14, 2002, this investigation was initiated by the United States Nuclear Regulatory Commission (NRC), Office of Investigations, Region I, to determine whether a contract security department lieutenant employed by Wackenhut Corporation at the R. E. Ginna Nuclear Power Plant deliberately submitted an adulterated urine sample on May 18, 2002, during a random drug screen examination.

Based on the evidence developed during this investigation, OI concludes that the contract security lieutenant deliberately submitted an adulterated urine sample on May 18, 2002, and deliberately and knowingly created a false document when he signed a Ginna fitness for duty (FFD) form on that same date.