

December 9, 2002

IA-02-041

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

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

Dear Mr. DiProspero:

In an undated letter received by the NRC on November 25, 2002, you provided a response to a Notice of Violation that the NRC sent you on October 22, 2002, detailing a violation of NRC requirements. The violation involved your deliberate submittal of inaccurate information (i.e., an adulterated urine sample and an inaccurate Fitness for Duty (FFD) form) to Rochester Gas & Electric Company (RG&E) during a random drug screen examination while you were employed as a security lieutenant (manager) by Wackenhut Corporation at the RG&E Ginna Nuclear Power Plant.

As noted in our October 22, 2002 letter, RG&E investigated the circumstances regarding your random FFD test after 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). Although you informed the MRO that you did not take any drugs and you stated that the abnormally low pH value of your urine sample was caused by taking nutrient supplements, you did not provide the MRO any written medical documentation to support your claim. Consequently, after reviewing all the facts, the MRO concluded that you had adulterated your urine sample and RG&E subsequently terminated your employment. The NRC reached a similar conclusion after an investigation by our Office of Investigations (OI).

In your response to the NRC's Notice of Violation, you indicated that there was a lack of evidence to support the violation and you asserted that your low pH during the FFD test was the result of nutrient supplements. You also stated that you were unable to provide evidence to the RG&E MRO to support your assertions, and you were not able to appeal your termination by the company. As noted in our October 22, 2002 letter, the OI investigator consulted a forensic toxicologist employed by the United States Department of Health and Human Services, Center for Substance Abuse Prevention, Division of Workplace Programs. This expert in the area of forensic toxicology 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 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 created a false document when you signed a Ginna fitness for duty (FFD) form indicating that

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you had not, in any way, adulterated your urine sample. You have not provided any information which would cause the NRC to alter that conclusion.

In your response to the NRC's Notice of Violation, you also indicated that you were never told that you were under investigation by the NRC, and for this reason, you also requested that the violation be dropped. The OI investigation indicates that the OI agent advised you about the function of OI and the agent's role. After providing you with this information, you agreed to continue with the investigation. Accordingly, your assertion that the NRC failed to inform you that you were under investigation, would not cause us to rescind the violation.

Based on the above, the NRC plans no further action with respect to your request. No response to this letter is required. 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, the NRC's October 22, 2002 letter and Notice of Violation, and your undated response to the October 22 Notice of Violation, will be made publicly available. A copy of those documents will also be provided to RG&E. 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

cc: (w/ NRC October 22, 2002 letter and Notice, as well as Mr. DiProspero's undated response)
Dr. Robert C. Mecredy
Vice President, Nuclear Operations
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, NY 14649

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*per phone call from D. Nelson (OE)