



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931**

January 3, 2003

IA-02-042

Donald M. Kirby
[Address removed per
10 CFR 2.790]

**SUBJECT: NOTICE OF VIOLATION (NRC OFFICE OF INVESTIGATIONS REPORT
2-2002-021)**

Dear Mr. Kirby:

This letter is in reference to an investigation completed by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) on August 28, 2002. The purpose of the OI investigation was to determine whether radiation surveys had been deliberately falsified at Duke Energy Corporation's (DEC) Catawba Nuclear Station. The investigation found that, during your employment at Catawba as a Radiation Protection Specialist, you deliberately falsified radiation surveys from a period of at least January through June 2002. As such, your actions appeared to be in violation of 10 CFR 50.5, Deliberate Misconduct. The results of the investigation were forwarded to you by letter dated November 7, 2002.

The letter transmitting the investigation findings also provided you the opportunity to either respond to the apparent violation in writing or request a predecisional enforcement conference. The NRC confirmed your receipt of our November 7, 2002, letter by certified mail, and subsequently attempted to contact you by telephone to determine your preference for addressing the apparent violation. Because the NRC has not received a written response from you addressing the apparent violation, and you have not contacted our office to request a predecisional enforcement conference, the NRC has concluded that you do not desire to provide any additional information for the NRC to consider on this matter. In addition, because you were provided an opportunity to explain the circumstances surrounding your actions during your interview with the OI special agent and in the absence of any additional information, the NRC has concluded that sufficient information is available to determine the appropriate enforcement action in this matter.

Therefore, based on the information developed during the investigation, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) (Enclosure), and involves the requirements of 10 CFR 50.5. This rule prohibits any employee of a licensee from (1) engaging in deliberate misconduct that causes a licensee to be in violation of any rule, regulation or order of the NRC or any condition of a license; or (2) deliberately submitting to a licensee information that the person submitting the information knows to be incomplete and inaccurate in some material respect to the NRC. In this case, you failed to perform required, routine radiation surveys on numerous occasions and deliberately fabricated data on the required radiological survey records submitted to the licensee. Your actions caused the licensee, DEC, to be in violation of Technical Specification 5.4; Procedure HB/0/B/1000/045; Radiation Protection Routines,

Mr. Donald M. Kirby

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Revision 6; and 10 CFR 50.9, which require that routine surveys be performed and associated documentation be maintained complete and accurate.

Given the significance of the underlying violation and the deliberate nature of your actions, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, after consultation with the Director, Office of Enforcement, and after considering the circumstances of this case, including the fact that the actual safety significance was low and that you are no longer employed by DEC, the NRC has decided to issue the enclosed Notice of Violation. You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action.

You are not required to respond to this letter. However, if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter with your address removed, its enclosure, and your response (if you chose to provide one) 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). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions regarding this matter, please contact Charles A. Casto, Director, Division of Reactor Safety, at 404-562-4600.

Sincerely,

/RA/ BSM for

Luis A. Reyes
Regional Administrator

Enclosure: Notice of Violation

CERTIFIED MAIL 7099 3400 0002 5509 1594
RETURN RECEIPT REQUESTED

Distribution w/encl:

W. Travers, EDO
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OEWEB

* See previous concurrence

OFFICE	RII:ORA	RII:DRS	RII:ORA			
SIGNATURE	SES FOR	**CC	BSM			
NAME	CEVANS	CCASTO	BMALLETT			
DATE	12/31/02	12/31/02	1/2/2003			
E-MAIL	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

NOTICE OF VIOLATION

Donald M. Kirby

IA-02-042

During an NRC investigation completed on August 28, 2002, 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 requires, in part, that any employee of a licensee may not (1) engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation or order of the NRC or any condition of a license; or (2) deliberately submit to a licensee information that the person submitting the information knows to be incomplete and inaccurate in some material respect to the NRC.

Contrary to the above, during the period of at least January 1, 2002, through June 4, 2002, Mr. Donald M. Kirby failed to perform required, routine radiation surveys on numerous occasions and deliberately fabricated data on the required radiological survey records submitted to the licensee. These actions caused the licensee to be in violation of Technical Specification 5.4; Procedure HB/0/B/1000/045; Radiation Protection Routines, Revision 6; and 10 CFR 50.9, which require that routine surveys be performed and require associated documentation to be maintained complete and accurate.

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

You are not required to submit a written statement or explanation pursuant to 10 CFR 2.201. However, if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region II within 30 days of the date of the letter transmitting this Notice.

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 any 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 3rd day of January 2003