

J. McKnight
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
OFFICE OF ENFORCEMENT
WASHINGTON, D.C. 20555-0001

February 9, 1998

NRC INFORMATION NOTICE 98-04: 1997 ENFORCEMENT SANCTIONS FOR DELIBERATE VIOLATIONS OF NRC EMPLOYEE PROTECTION REQUIREMENTS

Addressees

All U.S. Nuclear Regulatory Commission licensees.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this information notice (IN) to remind licensees and their employees of the sanctions that could result from deliberately violating NRC requirements in the area of employee protection. It is expected that licensees will review this information notice, distribute it to management and staff involved with licensed activities, including senior management at nuclear power plants, and consider actions, as appropriate, to avoid similar problems. However, suggestions contained in this IN are not NRC requirements; therefore, no specific action is required.

Discussion

The NRC places a high value on nuclear industry employees being free to raise potential safety concerns to both licensee management and to the NRC without fear of reprisal or actual harassment and intimidation. Section 211 of the Energy Reorganization Act (ERA), and 10 CFR 19.20, 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10, provide that no employer may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee engaged in certain protected activities. These protected activities include notifying an employer of an alleged violation of the Atomic Energy Act or ERA, refusing to engage in any practice made unlawful by those Acts, testifying before Congress or in a Federal or State proceeding regarding any provision of these Acts, or commencing, testifying, assisting, or participating in any proceeding under these Acts. Licensees and contractors are responsible for ensuring that discrimination does not occur against its employees for engaging in such protected activities. Licensees and contractors who discriminate against their employees for the employees' protected activities are subject to sanctions by the NRC. These sanctions include Notices of Violation and Civil Penalties.

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In addition, under the Deliberate Misconduct Rule (see, e.g., 10 CFR 30.10 and 10 CFR 50.5), licensee and contractor employees, including senior managers, are subject to sanctions by the NRC for discrimination against other employees for these employees' protected activities. These sanctions include Orders barring individuals from licensed activities. Significant NRC enforcement actions are published in NUREG-0940 and can be accessed through the NRC Office of Enforcement's Home Page at www.nrc.gov/OE.

Descriptions of Significant 1997 Enforcement Actions and Sanctions

- (1) An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) (IA 96-101) (NUREG-0940, Vol. 6, No. 1, Part 1 @ A-79) was issued on January 13, 1997, to an individual who, at the time of the events described in this IN, was employed by the Tennessee Valley Authority (TVA) as Vice-President for Nuclear Operations. This individual was responsible for the oversight of TVA's nuclear program at its four nuclear reactor sites. The former Manager, Chemistry and Environmental Protection (C&EP) in TVA's corporate organization alleged that he was engaged in protected activities during his employment at TVA, and as a result of these protected activities, he was discriminated against when he received an adverse employment action in the form of a threat of termination by TVA if he did not resign from his job. This former C&EP Manager filed a complaint with the U.S. Department of Labor (DOL) on June 29, 1993.

A DOL District Director concluded that discrimination, as defined and prohibited by Section 211 of the ERA, was a factor in the actions that comprised the former C&EP Manager's complaint. A DOL Administrative Law Judge (ALJ) issued a Recommended Decision and Order, finding that TVA discriminated against the former C&EP Manager in violation of Section 211 of the ERA (94-ERA-024).¹ The NRC's Office of Investigations (OI) also concluded that despite denials by the TVA managers involved, the methodology of the former C&EP Manager's engagement in protected activities was the primary reason for the adverse action against him. Both the DOL ALJ and OI concluded that the former Vice-President of Nuclear Operations at TVA ordered the forced resignation of the former C&EP Manager. The NRC staff concluded that the former Vice-President of Nuclear Operations at TVA was engaged in deliberate misconduct, in violation of 10 CFR 50.5, when he caused TVA to be in violation of the employee protection regulation contained in 10 CFR 50.7.

As a result of this NRC staff's conclusion, the former Vice-President was prohibited from engaging in, or exercising control over individuals engaged in NRC-licensed activities for a five year period beginning on May 1, 1993. In addition, for a five year period beginning May 1, 1998, this former Vice-President is required to notify the NRC at least five days

¹On November 20, 1996, the ALJ issued a Recommended Order of Dismissal, based on a conciliation agreement between the former C&EP Manager and TVA, and on November 22, 1996, the DOL Administrative Review Board issued a Final Order Approving Settlement and Dismissing Complaint.

prior to the first time he engages in, or exercises control over, NRC-licensed activities. The level of the sanction against the former Vice-President for Nuclear Operations at TVA was related, in part, to his seniority.

- (2) Related to this case, on January 13, 1997, the NRC issued a Notice of Violation (NOV) and Proposed Imposition of a \$100,000 Civil Penalty (EA 95-199) (NUREG-0940, Vol 16., No. 1, Part 2 @ A-202) to TVA based on a Severity Level I violation of 10 CFR 50.7. As noted above, this violation was based on the licensee's discrimination against the former C&EP Manager by the former Vice-President of Nuclear Operations on April 5, 1993, when the C&EP Manager was forced to resign from TVA because he had engaged in protected activities. TVA paid the Civil Penalty on February 11, 1997.
- (3) On January 23, 1997, the NRC issued an NOV (EA 95-006) (NUREG-0940, Vol. 16, No. 1, Part 3 @ B-159) to the Honolulu Medical Group based on the licensee discriminating against one of its employees by discharging the employee as a result of the employee alleging infractions of NRC requirements in written correspondence to the licensee.
- (4) On March 19, 1997, the NRC issued an NOV and Proposed Imposition of an \$8,000 Civil Penalty (EA 96-498) (NUREG-0940, Vol. 16, No. 1, Part 3 @ A-79) against Koppel Steel Corporation for a Severity Level II violation of 10 CFR 30.7. The enforcement action was based on discrimination by the licensee against its former Radiation Safety Officer (RSO) for the RSO providing information to an NRC inspector during an April 1996 inspection of the licensee's facility. The information provided during the inspection, in part, resulted in the NRC issuance of an NOV to the licensee on May 23, 1996, for five violations of NRC requirements identified during the inspection. Koppel Steel paid the Civil Penalty on April 18, 1997.
- (5) On October 31, 1997, an NOV and Proposed Imposition of a \$10,000 Civil Penalty (EA 97-180) was issued to Mattingly Testing Services, Inc. (MTSI) based on a Severity Level III violation of 10 CFR 30.7. This case was similar to the Koppel Steel case in that the enforcement action was based on discrimination by the licensee against one of its employees because the employee reported violations of NRC requirements to the NRC. The information provided to the NRC by MTSI's employee, in part, resulted in the NRC issuance of an NOV and assessing a \$15,000 Civil Penalty on May 5, 1995, against MTSI, for multiple violations of radiography requirements, and NOVs to individuals who committed the deliberate technical violations.

No specific action or written response is required by this information notice. If you have any questions about this matter, please call the contact listed below or the appropriate NRC regional office.

Original signed by
 Donald A. Cool, Director
 Division of Industrial and
 Medical Nuclear Safety
 Office of Nuclear Material Safety
 and Safeguards

Original signed by
 Jack W. Roe, Acting Director
 Division of Reactor Program Management
 Office of Nuclear Reactor Regulation

Contact: Michael Stein, OE
 01-415-1688
 E-mail: mhs@nrc.gov

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*See previous concurrence

Tech Editor concurred on 1/28/98

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Information Notice No.	Subject	Date of Issuance	Issued to
98-03	Inadequate Verification of Overcurrent Trip Setpoints in Metal-Clad, Low-Voltage Circuit Breakers	2/9/98	All holders of operating licenses for nuclear power reactors
98-02	Nuclear Power Plant Cold Weather Problems and Protective Measures	1/21/98	All holders of operating licenses for nuclear power reactors
98-01	Thefts of Portable Gauges	1/15/98	All portable gauge licensees
97-91	Recent Failures of Control Cables Used on Amersham Model 660 Posilock Radiography Systems	12/31/97	All industrial radiography licensees
97-90	Use of Nonconservative Acceptance Criteria in Safety-Related Pump Surveillance Tests	12/30/97	All holders of OLs for nuclear power reactors except those who have ceased operations and have certified that fuel has been permanently removed from the vessel
97-89	Distribution of Sources and Devices Without Authorization	12/29/97	All sealed source and device manufacturers and distributors
97-88	Experiences During Recent Steam Generator Inspections	12/16/97	All holders of OLs for pressurized-water reactors except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor
97-87	Second Retrofit to Industrial Nuclear Company IR 100 Radiography Camera, to Correct Inconsistency in 10 CFR Part 34 Compatibility	12/12/97	All industrial radiography licensees

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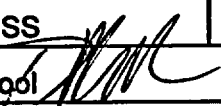

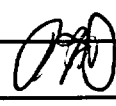
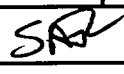

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 Office of Nuclear Reactor Regulation

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 E-mail: mhs@nrc.gov

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