



HAYWARD TYLER

26 January 2004

Mr. Bruce A. Boger, Director
Division of Inspection Program Management
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Subject: Alleged Discrimination (U.S. Department of Labor Administrative Law Judge Case
No. 2001-ERA-043)

Your letter of the same subject dated December 31, 2003

Dear Mr. Boger:

As you stated in your December 31, 2003 letter to me, Mr. Doherty alleged that Hayward Tyler Inc terminated his employment in violation of Section 211 of the Energy Reorganization Act (ERA) of 1974. After lengthy, and separate, investigations conducted by both the NRC and the U.S. Department of Labor (DOL) both agencies separately concluded that Mr. Doherty was not the subject of discrimination in violation of ERA. While it is true that Mr. Doherty appealed the Department of Labor decision and that, as you stated in your letter, the Administrative Law Judge (ALJ) ruled that "...Hayward Tyler terminated his (Doherty's) employment in violation of the ERA's employee protection provision.", Hayward Tyler Inc did not agree with that decision and appealed the decision to the DOL Administrative Review Board.

This case has now been settled and the appeal dismissed without any admissions of liability by Hayward Tyler Inc. We believe that this renders your concerns moot and we have no plans to take any further action. This case began almost four (4) years ago, most of our employees were never aware of the case, and more than half of our current employees were not here when Mr. Doherty's employment was terminated. We do not believe that this case would be a deterrent to any employee identifying or raising any potential safety concerns relating to any Nuclear work we are doing, and our internal procedures encourage employees to raise any such concerns. Hayward Tyler has never discouraged or penalized its employees from raising safety concerns, notwithstanding the erroneous decision of the ALJ.

Sincerely,

Dennis M. Smith
President & General Manager
Hayward Tyler Inc.

cc: Mark H. Scribner, Esq.

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