



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001

September 16, 2004

EA-04-119

Mr. Dennis Smith
President and General Manager
Hayward Tyler, Inc.
P.O. Box 680
480 Roosevelt Highway
Colchester, VT 05446

SUBJECT: NOTICE OF VIOLATION (U.S. DEPARTMENT OF LABOR ADMINISTRATIVE
LAW JUDGES CASE NO. 2001-ERA-00043)

Dear Mr. Smith:

This is in reference to the findings from a U.S. Department of Labor (DOL) Administrative Law Judges (ALJ) proceeding (ALJ Case No. 2001-ERA-00043). The ALJ found in its Decision, Preliminary Order and Recommended Final Order, issued September 23, 2003, that Mr. Dennis Doherty, a former Quality Control inspector at Hayward Tyler, Inc. (HTI) was the subject of employment discrimination in August 2000 when HTI terminated his employment in violation of the Energy Reorganization Act's (ERA) employee protection provision. The U.S. Nuclear Regulatory Commission's (NRC) review of the ALJ decision identified an apparent violation of the Commission's requirements in 10 CFR 50.7, Employee Protection, which was transmitted to HTI by letter dated August 3, 2004. Our August 3rd letter provided HTI the opportunity to either respond to the apparent violation in writing or request a predecisional enforcement conference (PEC). Your attorney informed NRC that HTI did not wish to attend a PEC. By letter dated August 31, 2004, HTI provided its response to the apparent violation and addressed the corrective actions it has taken or will take to prevent recurrence. NRC has reviewed the August 31, 2004, response and the ALJ decision and concludes that sufficient information is available to determine the appropriate NRC enforcement action in this matter.

This matter was fully litigated during the DOL proceedings, and the NRC adopts the ALJ's Decision, Preliminary Order and Recommended Final Order. The NRC has determined that the apparent violation described in our August 3, 2004, letter is best characterized as a single violation of NRC requirements. The violation is cited in the enclosed Notice of Violation, and involves actions taken by HTI against Mr. Doherty which were in violation of 10 CFR 50.7. Specifically, the NRC has determined that HTI discriminated against Mr. Doherty, as described in the DOL ALJ decision, by terminating his employment with HTI. The NRC has concluded that the protected activity was a contributing factor in Mr. Doherty's termination. Based on the severity of the adverse action taken and the level of management involved in the adverse action, this violation has been categorized at Severity Level II in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

Your letter of August 31, 2004, documented the corrective actions HTI has taken or will take to prevent recurrence of the violation. Those actions include: (1) conduct meetings with all employees to inform them of this case, reiterate that HTI will not discriminate against employees that bring forward safety concerns, and reinforce the procedure for bringing safety concerns to the attention of the proper persons at HTI, (2) retain an outside consulting firm to train HTI employees and management how to manage and investigate employee concerns while protecting employees from reprisal, (3) conduct internal management training sessions to sensitize HTI managers to the regulatory restrictions on employee reprisal and duress, including NRC, DOL, OSHA and state regulations, (4) where appropriate, hire outside consultants and legal counsel to advise and help train the HTI staff on the employment environment, (5) continue to have the HTI employment manual, job descriptions and quality control documents reviewed internally and by outside counsel to insure continual compliance with regulations and to promote a work environment that encourages employees to raise safety concerns without fear of reprisal, and (6) revise HTI's internal discipline and grievance procedure so that any employee with a claim of unjust termination, or other disciplinary action, allegedly taken by HTI because of the employee raising safety concerns, may request a review of the disciplinary action by the President and General Manager or by other senior corporate management prior to the personnel action being finalized.

The NRC has concluded that information regarding the reason for the violation and the corrective actions taken to prevent recurrence has already been provided in HTI's letter of August 31, 2004, and as discussed above. Therefore, you are not required to respond regarding these matters unless the description in your letter and as summarized above does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice of Violation.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (if you choose to provide one) will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

Docket No.: 999-0345

Enclosure: Notice of Violation

D. Smith

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NOTICE OF VIOLATION

Hayward Tyler, Inc.
Colchester, Vermont

Docket No. 999000345
EA-04-119

As a result of a Department of Labor (DOL) Administrative Law Judges (ALJ) Decision, Preliminary Order and Recommended Final Order issued on September 23, 2003, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violation is listed below:

10 CFR 50.7 prohibits discrimination by a contractor or subcontractor of a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. The activities which are protected are established by Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include, but are not limited to, reporting of safety concerns by an employee to his employer or the NRC.

Contrary to the above, Hayward Tyler, Inc. (HTI) discriminated against Mr. Dennis M. Doherty, the former Quality Control Inspector at HTI, when it terminated his employment on August 14, 2000, for engaging in a protected activity. Specifically, Mr. Doherty engaged in a protected activity when he (1) wrote a non-conformance report (NCR) regarding the acceptability of a safety-related pump seal and (2) questioned the qualifications of a Level 2 visual and liquid penetrant welding examiner.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence has already been provided in HTI's letter of August 31, 2004. Therefore, you are not required to respond to this Notice of Violation. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or 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 of Violation.

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 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>. 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 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you are required to post this Notice within two working days.

Dated this 16th day of September 2004