



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

September 29, 2004

EA-04-123

Mr. J. Morris Brown
Vice President - Operations
United States Enrichment Corporation
Two Democracy Center
6903 Rockledge Drive
Bethesda, MD 20817

SUBJECT: APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-040)

Dear Mr. Brown:

This letter refers to an investigation conducted at the U.S. Enrichment Corporation (USEC), Paducah Gaseous Diffusion Plant (Paducah) by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI). The purpose of the investigation was to determine if a former Quality Control (QC) Manager at Paducah was the subject of employment discrimination for engaging in protected activities in accordance with 10 CFR 76.7. The former QC Manager alleged that he was discriminated against when he was suspended and later terminated from employment at Paducah in retaliation for raising safety concerns about a uranium hexafluoride (UF₆) crane. After being terminated, the former QC Manager alleged that he was again discriminated against by Paducah, because of the previously raised concerns, when he was not considered for a contract position at Paducah. The OI investigation did not substantiate the allegation that the QC Manager was terminated because of raising safety concerns about the UF₆ crane. However, based on the facts and circumstances described in OI Report Number 3-2002-040, the NRC is concerned that USEC may have discriminated against its former QC Manager by not considering him for a contract position at Paducah in retaliation for previously raised safety concerns, in apparent violation of 10 CFR 76.7. This issue was discussed during telephone conversations with you on September 20 and 22, 2004.

Based on the staff's review of the OI investigation, an apparent violation was identified and is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The current Enforcement Policy can be found on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. The apparent violation of 10 CFR 76.7, "Employee protection," involves a former QC Manager at Paducah who applied for and was denied a position as a contract employee at Paducah because of safety concerns he raised when previously employed at Paducah. Specifically, the Engineering and Services Manager at Paducah, who had knowledge of the former QC Manager's prior protected activities of raising safety concerns, discouraged the owner of Seminole Systems, a contractor company which provides people with particular skills to USEC, from referring the former QC Manager for a contract escort position at Paducah. Since the NRC has not made a final determination in this matter, no Notice of Violation is being issued at this time. In addition, please be advised

that the number and characterization of the apparent violation may change as a result of further NRC review.

In order for the NRC to resolve this apparent violation, we are offering USEC the opportunity either to attend a closed predecisional enforcement conference (PEC) or to request alternative dispute resolution (ADR). Both options are discussed in the paragraphs that follow.

The purpose of the PEC would be to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. The conference would provide an opportunity for you to give your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. A PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. As noted above, the OI investigation did not substantiate the allegation that the former QC Manager was suspended and later terminated from employment at Paducah in retaliation for raising safety concerns. Therefore, the unsubstantiated allegation would only be a subject of discussion at a PEC to the extent that it provides relevant background information for the second allegation, i.e., the former QC Manager was discriminated against by Paducah when he was not considered for a contract position at Paducah in retaliation for previously raised safety concerns.

The NRC's Enforcement Policy permits the individual who is the subject of the alleged employment discrimination to participate in the conference. Accordingly, the former QC Manager would be invited to attend the PEC. The former QC Manager may participate by observing the conference and, following the presentation by USEC, he may, if desired, present his views on why he believes discrimination occurred and comment on the Paducah presentation. USEC would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances would the NRC staff permit USEC or the former QC Manager to cross-examine or question each other.

Instead of a PEC, you may request ADR with the NRC. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process (the NRC and the licensee) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Generally, the NRC is willing to discuss the resolution of three potential issues: 1) whether a violation occurred; 2) the appropriate enforcement action; and 3) the appropriate corrective actions for the violation(s). Additional information concerning the NRC's pilot program can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate

mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at 607-255-1124 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. You may also contact Nick Hilton, Office of Enforcement, at (301) 415-3055 for additional information.

Enclosed is a redacted copy of OI Report Number 3-2002-040. The OI report provides an overview of the evidence gathered during this investigation. Portions of the OI report have been redacted, but the substantive issues related to this case remain. The OI report is only being provided to the USEC at this time. After a full review of the circumstances, the NRC may conclude that no enforcement action is warranted. Therefore, we request that you not make the OI report available to the general public. If a PEC is held, the other PEC participants will be sent a copy of the redacted OI report.

No response regarding the apparent violation is required at this time. However, please contact Mr. Doug Starkey, Enforcement Specialist, NRC Office of Enforcement, at 301-415-3456 or via e-mail at DRS@nrc.gov, within 15 days of the date of this letter to notify the NRC if you choose to have a PEC.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, without the enclosure, 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>.

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

Docket No. 070-07001
Certificate No. GDP-1

Enclosure: Redacted Copy of the Office of Investigations Report of Investigation
No. 3-2002-040

cc w/out enclosure:

R. B. Starkey, Paducah General Manager
S. R. Cowne, Paducah Regulatory Affairs Manager
S. A. Toelle, Director, Nuclear Regulatory Affairs, USEC
R. M. DeVault, Regulatory Oversight Manager, DOE
G. A. Bazzell, Paducah Facility Representative, DOE
Janice H. Jasper, State Liaison Officer

Mr. J. Morris Brown

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