



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001
OFFICE OF THE DIRECTOR

September 25, 1997 2:16

VA MEDICAL CENTER
PHILADELPHIA, PA

Handwritten notes:
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U. Zloty
D. Newton
Steve Richards
to file

EA 96-182

Mr. Earl F. Falast, Director
Department of Veterans Affairs
Medical Center
University and Woodland Avenues
Philadelphia, Pennsylvania 19104

SUBJECT: REDUCTION OF SEVERITY LEVEL OF VIOLATION, AND WITHDRAWAL OF CIVIL PENALTY, ISSUED ON SEPTEMBER 18, 1996

Dear Mr. Falast:

By letter dated September 18, 1996, the U.S. Nuclear Regulatory Commission (NRC) issued you a Notice of Violation and Proposed Civil Penalty for a violation of 10 CFR 30.7(a). Our letter and Notice described a violation that was classified at Severity Level II involving discrimination against your Radiation Safety Officer (RSO). The violation was based on a finding by the US Department of Labor (DOL) that the RSO was chastised by her supervisor after contacting the NRC in November 1995 regarding radiation safety concerns related to then impending furloughs at your facility and the impact on the RSO position. A civil penalty in the amount of \$8,000 was proposed for the violation to emphasize the unacceptability of discrimination against employees in retaliation for engaging in a protected activity and the importance of continuously assuring a work environment that is free of any harassment, intimidation, or discrimination against those who raise safety concerns.

On November 15, 1996, you sent the NRC a "Response to the Notice of Violation and Proposed Imposition of Civil Penalty" and "Answer to a Notice of Violation." In these documents, you admitted the violation but requested that the NRC reconsider the determination that the chastisement of the RSO by the supervisor constituted a Severity Level II violation warranting a civil penalty of \$8,000.00. In support of your request, you stated, among other things, that the supervisor chastised the employee not just for telephoning the NRC but for failing to notify him of certain information of which she was aware; that the chastisement was an isolated occurrence; that other employees were not "chilled" by this event from raising safety concerns; and that a Severity Level II violation is for the most severe violations involving actual or high potential impact on the public, which was not the case here.

After reviewing your response, the NRC informed you, in a letter, dated January 27, 1997, that the NRC review of this matter was continuing. Also, an investigation was conducted by the NRC Office of Investigations to determine if the RSO had been the object of continued discrimination because of her contact with the NRC in November 1995. OI did not substantiate continued discrimination against the RSO. This is reflected in the enclosed copy of the synopsis of the OI report.

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After considering all of the available information, including the results of the OI investigation, the NRC has concluded that the violation would be more appropriately classified at Severity Level III and that enforcement discretion should be exercised to not issue a civil penalty pursuant to Section VII.B.6 of the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600. This determination is based on the following:

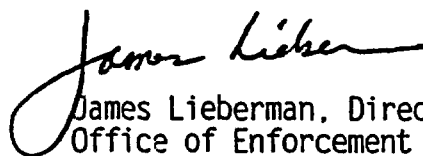
1. The chastisement did not substantially affect conditions of employment, an apology was issued and she remains the RSO;
2. DOL concluded in its September 5, 1996 notification that it found the Department of Veterans Affairs met the terms and conditions of remedies outlined in DOL's notification letter, dated March 6, 1996, concerning the violation; and
3. Investigations conducted by DOL and UI did not substantiate continued discrimination against the RSO for contacting the NRC.

We will review the effectiveness of your corrective actions during subsequent inspections.

Notwithstanding the above, you are reminded that discrimination against any employee for raising of a safety concern is a serious matter. Further, we note that recent NRC inspections have found problems that collectively indicate communication issues and poor working relationships may exist at your facility. The NRC continues to be concerned that these problems could adversely impact radiological safety at your facility. The NRC is presently reviewing the results of these inspections and will continue to closely monitor activities conducted under your license.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosures will be placed in the NRC's Public Document Room.

Sincerely,



James Lieberman, Director
Office of Enforcement

Docket No. 030-14526
License No. 37-00062-07

Enclosure: OI synopsis

Department of Veterans Affairs
Medical Center

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cc:
Commonwealth of Pennsylvania

Department of Veterans Affairs
Medical Center
ATTN: Dr. Thomas V. Hollohan, Chief
Patient Care Services Officer
810 Vermont Avenue, N.W.
Washington, DC 20420

SYNOPSIS

On October 18, 1996, the NRC, Office of Investigations (OI), Region I (RI), initiated this supplemental investigation to determine whether the Philadelphia Veterans Administration Medical Center (PVAMC) has discriminated against the Radiation Safety Officer (RSO) for raising concerns to the NRC about the safety impact of the RSO being furloughed.

Based on the evidence developed during this investigation, OI could not substantiate the allegation of discrimination against the RSO by PVAMC because of the RSO's November 16, 1995, telephone call to the NRC regarding the furlough issue.