



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
476 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1416

September 18, 1996

EA 96-182

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

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$8,000
(U.S. Department of Labor Wage & Hour Acting District Director Investigation)**

Dear Mr. Falast:

This letter refers to the March 6, 1996, findings of the U.S. Department of Labor's (DOL's) Acting District Director (DD), Wage and Hour Division, in Philadelphia, Pennsylvania, regarding a complaint filed on February 5, 1996, by your Radiation Safety Officer (RSO) for the Department of Veterans Affairs Medical Center (VA) in Philadelphia. After an investigation in this case, the DD found that the VA discriminated against the RSO in violation of Section 211 of the Energy Reorganization Act of 1974, as amended, because she engaged in protected activities. Specifically, the DD found that the RSO was chastised by her immediate supervisor, the Chief of Engineering, for raising safety concerns to the NRC. For purposes of Section 211 of the Energy Reorganization Act of 1974, as amended, the decision of the DD is considered as the decision of the Secretary of Labor.

After the DD issued the decision, the NRC sent you a letter, dated April 12, 1996, requesting a description of your actions taken or planned to assure that this employment action does not have a "chilling effect" in discouraging the RSO or other licensee or contractor employees from raising perceived safety concerns. In your response, dated May 21, 1996, you indicated that the VA Philadelphia Medical Center had made several good faith efforts to assure that the incident does not have a chilling effect in discouraging other licensee or contractor employees from raising perceived safety concerns, including the posting of a notice reminding all employees of your commitment to protect their rights to contact any outside regulatory agency, including the NRC. Subsequently, on August 26, 1996, a transcribed predecisional enforcement conference was held with you, and other members of your staff, to discuss this occurrence, the apparent violation, its cause and your corrective actions. A copy of the enforcement conference report will be sent to you separately.

Based on the DD's findings, and the information that you provided during the conference, the NRC concludes that a violation of the Commission's regulations has occurred. The violation is described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). 10 CFR 30.7, "Employee Protection," prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. Protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as

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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, providing the Commission or his or her employer information about alleged violations of either the Atomic Energy Act or the Energy Reorganization Act. The RSO's contact with the NRC was clearly a protected activity. Since the discriminatory actions in this case involved the RSO's immediate supervisor who was in a position above first line supervision (Chief of Engineering), this violation has been categorized at Severity Level II in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$4,000 is considered for a Severity Level II violation. Because the violation is categorized at a Severity Level II, the NRC considered whether credit was warranted for *Identification and Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. No credit is warranted for *Identification* since you did not identify the discriminatory actions. Your corrective actions consisted of: (1) issuing a memorandum to the employee's supervisor advising him that the employee's whistleblowing activities will not be considered as a negative factor in any future performance appraisals; and (2) posting a notice reaffirming the VA's commitment to protecting employees' rights to directly contact the NRC, on the Human Resources Management Service's official bulletin board, Engineering Services bulletin board, Nuclear Medicine's bulletin board and several bulletin boards in Research Service. However, credit is not warranted for your *corrective actions* because your corrective actions were neither prompt nor comprehensive. Specifically: (1) the above corrective actions were required by a March 6, 1996 letter from the DD; (2) your corrective actions did not include a determination of the root cause of the violation or a comprehensive review of the chilling effect of the prohibited discrimination on all employees in the medical center; and (3) no training was provided to managers regarding their responsibility to encourage free and open communication to the NRC with no fear of harassment, intimidation or discrimination. Accordingly, the base civil penalty is being escalated by 100% based on your failure to take prompt and comprehensive corrective actions.

Therefore, 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, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice in the amount of \$8,000 (twice the base amount), for this Severity Level II violation set forth in the Notice.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, notwithstanding your past corrective actions documented in your response of May 21, 1996, to our "chilling effect" letter dated April 12, 1996, regarding the actions against the employee, please respond in writing within thirty days of your receipt of the Notice describing any additional actions you have taken or plan to take to minimize any potential chilling effect arising from the circumstances related to the employee that might inhibit or prevent your employees from raising safety concerns to either your own organization or the NRC. It is clear that the VA Organization

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must assure that all managers and supervisors at all facilities have been trained to ensure that employees feel free to raise safety concerns internally or to the NRC without fear of retaliation. Therefore, your response should include your plans in addressing this area. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.780 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,



Hubert J. Miller
Regional Administrator

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

Enclosure: Notice of Violation and Proposed Imposition
of Civil Penalty

cc:w/encl:
Commonwealth of Pennsylvania

ENCLOSURE**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

Department of Veterans Affairs
Medical Center
Philadelphia, Pennsylvania

Docket No. 030-14526
License No. 37-00062-07
EA 98-182

Based on the findings of the Acting District Director (DD) of the U.S. Department of Labor (DOL) Wage and Hour Division in Philadelphia, dated March 6, 1998, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 30.7(a) states, in part, that discrimination by a Commission licensee against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in 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.

The protected activities include, but are not limited to, providing the Commission or his or her employer information about alleged violations of either the Atomic Energy Act or the Energy Reorganization Act or possible violations of requirements imposed under either of those statutes.

Contrary to the above, on November 17, 1995, the licensee discriminated against its Radiation Safety Officer (RSO) at its facility in Philadelphia, Pennsylvania, for engaging in protected activities. Specifically, after the RSO contacted the NRC regarding safety concerns related to then-impending federal government furloughs and their impact on the RSO position, a protected activity under Section 211 of the Energy Reorganization Act of 1974, as amended, the licensee's Chief of Engineering chastised the RSO because she had contacted the NRC. (01012)

This is a Severity Level II violation (Supplement VII).
Civil Penalty - \$8,000

Pursuant to the provisions of 10 CFR 2.201, Department of Veterans Affairs Medical Center (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice

Enclosure**2**

of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

Enclosure**3**

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

**Dated at King of Prussia, Pennsylvania
this 18th day of September 1996**