

August 18, 2005

IA-05-007

Mr. Joseph Guariglia
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: NOTICE OF VIOLATION AND CONFIRMATORY ORDER (EFFECTIVE
IMMEDIATELY) (NRC Office of Investigations Report No. 1-2004-005)

Dear Mr. Guariglia:

On February 3, 2004, the NRC's Office of Investigations (OI), Region I, initiated an investigation at the Nine Mile Point Nuclear Station, to determine whether you deliberately violated conditions of the Nine Mile Point Unit 2 license by compromising an unannounced fire drill in June 2000 when you were a fire protection supervisor. The investigation substantiated that you deliberately compromised the unannounced fire drill. This conclusion was noted in a factual summary of the OI report that we sent to you with our letter dated March 18, 2005.

In our letter, dated March 18, 2005, we informed you that an apparent violation of 10 CFR 50.5 was identified and was being considered for escalated enforcement action against you in accordance with the NRC Enforcement Policy. As a result of this finding, our letter offered you a choice to attend a Predecisional Enforcement Conference or to provide a written response. Subsequently, you were also provided an opportunity to request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions.

ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party, and the NRC currently has a pilot program for using ADR. The technique that the NRC decided to employ during the pilot program, which is now in effect, is mediation.

At your request, an ADR mediation session was held between you and the NRC in Philadelphia, PA, on June 22, 2005, and a settlement agreement was reached regarding your role in this matter. The elements of the settlement agreement are as follows:

1. The NRC determined that a violation occurred when an unannounced fire drill at Nine Mile Point Unit 2 was compromised in June 2000. This was contrary to technical specifications and 10 CFR Part 50, Appendix R, requirements, which require that persons planning and authorizing an unannounced drill shall ensure that the responding shift fire brigade members are not aware that a drill is being planned until it is begun.

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2. The NRC maintains that you deliberately compromised the fire drill when you called the fire brigade leader to inform him of its time and location. Because your deliberate actions placed Nine Mile Point 2 in violation of NRC requirements, you were in violation of 10 CFR 50.5. You maintain that you do not recall the specifics associated with this fire drill. However, in light of the evidence available, you agreed that the fire drill was compromised and agreed that you were in violation of 10 CFR 50.5.
3. You, subsequent to the identification of this violation, will take actions to assure that you learned from this violation and provide the NRC with assurance that it will not recur. These actions include (a) writing an article to share with the Constellation fleet that explains the importance of following procedural requirements, maintaining the integrity of unannounced fire drills, and maintaining a questioning attitude to verify and validate decisions and (b) prior to December 31, 2005, participating in a stand-down meeting with appropriate fire protection staff and describing the lessons learned from the compromised fire drill and the importance of raising concerns when an issue does not comply with requirements.
4. In light of your agreement to Items 1 and 2 and the actions you will take as described in Item 3, the NRC agrees to issue you a Notice of Violation without a specified severity level. The NRC will place the Notice of Violation, which will be publically available in ADAMS, on the NRC "Significant Enforcement Actions - Individuals" website. The Notice of Violation will be placed on the "Significant Enforcement Actions - Individuals" website no longer than 1 year.
5. You agreed to issuance of a Confirmatory Order confirming this agreement.

As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated August 16, 2005, you agreed to issuance of the enclosed Notice of Violation (Notice) and Confirmatory Order (Effective Immediately). You are not required to respond to this letter or Notice. However, if you choose to respond, your written response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 475 Allendale Road, King of Prussia, PA 19406, and marked "Open by Addressee Only" within 30 days of the date of this letter. In addition, once you have completed the actions required in Item 3 of this letter, which are also set forth in Item III.3 of the enclosed Confirmatory Order, you have 30 days to send the NRC a letter to the above address informing us that the actions are complete.

In accordance with the agreement reached at the ADR session as noted in Item 4 above, a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter on its website for a period of 1 year at www.nrc.gov; select **What We Do, Enforcement, Significant Enforcement Actions**, then **Individuals**. Your response, if you choose to provide one, with your address removed, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). This letter will be maintained by the Office of Enforcement (OE) in a NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our website at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Mr. Joseph Guariglia

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In addition, based in part on your violation, an enforcement action is being issued to Nine Mile Point Nuclear Station, LLC, on this date. A copy of our letter that issued this enforcement action is enclosed. You should also be aware that any additional deliberate violations in the future could result in more significant enforcement action or civil action against you.

If you have any questions or comments concerning this letter, please contact Mr. Karl Farrar of my staff at 610-337-5301.

Sincerely,

/RA/

Samuel J. Collins,
Regional Administrator

Enclosures: As Stated

cc: Nine Mile Point Nuclear Station

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SISP Review Complete: JMT **(Reviewer's Initials)**

DOCUMENT NAME: E:\Filenet\ML052300359.wpd

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OFFICE	RI/ORA	RI/ORA	RI/DRP	RI/DRP	RI/OI
NAME	RUrban	DHolody	BHolian	JTrapp	EWilson (JAT for)
DATE	07/27/05	07/29/05	07/28/05	07/28/05	07/28/05
OFFICE	RI/ORA	HQ/OGC	HQ/OE	HQ/NRR	RI/RA
NAME	KFarrar	TSmith (RJu for)	JLuehman (RJu for)	BBoger (RJu for)	SCollins
DATE	07/28/05	08/03/05 (NLO)	08/05/05	08/03/05	08/02/05

OFFICIAL RECORD COPY

Consent and Hearing Waiver Form

I, Joseph Guariglia, hereby agree with the attached draft Notice of Violation and to those commitments described therein, and agree to the incorporation of those commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, I consent to the issuance of the Notice of Violation and Confirmatory Order, effective immediately, containing the commitments agreed to at the ADR mediation session held in Philadelphia, PA, on June 22, 2005, as incorporated in the draft Confirmatory Order attached; and by doing so, pursuant to 10 CFR 2.202(a)(3) and (d), I waive the right to request a hearing on all or any part of the Confirmatory Order.



Joseph Guariglia



Date

NOTICE OF VIOLATION

Mr. Joseph Guariglia
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

IA-05-007

During an NRC investigation completed on January 3, 2005, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 50.5(a)(1), in part, prohibits any licensee employee from engaging in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any rule or regulation issued by the Commission.

Until February 2001, Nine Mile Point Unit 2 Technical Specification 6.4, "Training," required that the training program for the fire brigade shall meet or exceed the requirements of Appendix R to 10 CFR Part 50.

10 CFR Part 50, Appendix R, Section III.I.3.b, requires, in part, that persons planning and authorizing an unannounced fire drill shall ensure that the responding shift fire brigade members are not aware that a fire drill is being planned until it is begun.

Contrary to the above, while working as the fire protection supervisor at Nine Mile Point on June 14, 2000, you engaged in deliberate misconduct that caused Nine Mile Point Nuclear, LLC, (the licensee) to be in violation of an NRC regulation. Specifically, prior to commencement of a planned, unannounced, fire drill, you made a responding shift fire brigade member (the fire brigade leader) aware of not only the fact that an unannounced fire drill was planned but also the time and location of the planned, unannounced, fire drill.

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, and the date when full compliance will be achieved is already adequately addressed on the docket in the letter forwarding this Notice. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description herein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, your written response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 475 Allendale Road, King of Prussia, PA 19406, and marked "Open by Addressee Only" within 30 days of the date of the letter transmitting this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation, IA-05-007."

If you choose to respond, your response 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>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Dated this 18th day of August 2005.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Joseph Guariglia

IA-05-007

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Mr. Joseph Guariglia (Mr. Guariglia) is employed by Nine Mile Point Nuclear Station, LLC, at the Nine Mile Point Nuclear Station. The facility is located in Lycoming, NY. In June 2000, Mr. Guariglia was a fire protection supervisor at the facility.

II

Following the receipt of information in January 2004, an investigation was initiated by the NRC's Office of Investigations (OI), Region I, on February 3, 2004, at the Nine Mile Point Nuclear Station. This investigation was initiated to determine whether Mr. Guariglia deliberately violated conditions of the Nine Mile Point Unit 2 license by compromising an unannounced fire drill in June 2000. Based on the evidence developed during its investigation, OI substantiated that Mr. Guariglia deliberately compromised the unannounced fire drill in June 2000. Mr. Guariglia was informed of the NRC finding in a letter dated March 18, 2005.

III

In response to the NRC's March 18, 2005 letter, Mr. Guariglia requested the use of Alternative Dispute Resolution (ADR) to resolve this matter. ADR is a process in which a neutral mediator, with no decision-making authority, assisted the NRC and Mr. Guariglia to resolve any

disagreements on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. An ADR session was held between Mr. Guariglia and the NRC in Philadelphia, PA, on June 22, 2005, and was mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. During that ADR session, a settlement agreement was reached. The elements of the settlement agreement consisted of the following:

6. The NRC determined that a violation occurred when an unannounced fire drill at Nine Mile Point Unit 2 was compromised in June 2000. This was contrary to technical specifications and 10 CFR Part 50, Appendix R, which require that persons planning and authorizing an unannounced fire drill shall ensure that the responding shift fire brigade members are not aware that a fire drill is being planned until it is begun.
7. The NRC maintains that Mr. Guariglia deliberately compromised the fire drill when he called the fire brigade leader to inform him of its time and location. Because Mr. Guariglia's deliberate actions placed Nine Mile Point 2 in violation of NRC requirements, Mr. Guariglia was in violation of 10 CFR 50.5. Mr. Guariglia maintains that he does not recall the specifics associated with this fire drill. However, in light of the evidence available, Mr. Guariglia agreed that the fire drill was compromised and agreed that he was in violation of 10 CFR 50.5.
8. Mr. Guariglia, subsequent to the identification of this violation, will take actions to assure that he learned from this violation and provide the NRC with assurance that it will not recur. These actions include (a) writing an article to share with the Constellation fleet that explains the importance of following procedural requirements, maintaining the integrity of

unannounced fire drills, and maintaining a questioning attitude to verify and validate decisions and (b) prior to December 31, 2005, participating in a stand-down meeting with appropriate fire protection staff and describing the lessons learned from the compromised fire drill and the importance of raising concerns when an issue does not comply with requirements.

9. In light of Mr. Guariglia's agreement to Items 1 and 2 and the actions he will take as described in Item 3, the NRC agrees to issue a Notice of Violation without a specified severity level, to Mr. Guariglia. The NRC will place the Notice of Violation, which will be publically available in ADAMS, on the NRC "Significant Enforcement Actions - Individuals" website. The Notice of Violation will be placed on the "Significant Enforcement Actions - Individuals" website no longer than 1 year.
10. Mr. Guariglia agreed to issuance of a Confirmatory Order confirming this agreement.

IV

Since Mr. Guariglia has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through the NRC's confirmation of the commitments as outlined in this Confirmatory Order.

I find that Mr. Guariglia's commitments as set forth in Section III above are acceptable. However, in view of the foregoing, I have determined that these commitments shall be confirmed by this Confirmatory Order. Based on the above and Mr. Guariglia's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR § 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, THAT PRIOR TO DECEMBER 31, 2005:

11. Mr. Guariglia shall write an article to share with the Constellation fleet that explains the importance of following procedural requirements, maintaining the integrity of unannounced fire drills, and maintaining a questioning attitude to verify and validate decisions.
12. Mr. Guariglia shall participate in a stand-down meeting with appropriate fire protection staff and describe the lessons learned from the compromised fire drill and the importance of raising concerns when an issue does not comply with requirements.
13. Mr. Guariglia shall notify the NRC, in writing, within 30 days of completion of the actions described in Items 1 and 2 above.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Guariglia of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Guariglia, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given

to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to Mr. Guariglia. Because Mr. Guariglia's home address has been deleted pursuant to 10 CFR 2.390, his copy should be provided to the NRC Office of Enforcement who will forward it to Mr. Guariglia. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel by means of facsimile transmission to 301-415-3725 or e-mail to OGCMailCenter@nrc.gov. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE EFFECTIVENESS DATE OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michael Johnson, Director
Office of Enforcement

Dated this 18 day of August 2005