



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

October 28, 2000

MEMORANDUM TO: Andrea L. Kock, Allegation Coordinator, EICS
FROM: *Cynthia D. Pederson*
Cynthia D. Pederson, Director, DNMS
SUBJECT: DRAFT NOV FOR ERBIA-FUEL TAMPERING AT CE NUCLEAR
POWER, LLC (RIII-2000-A-0148)

Your staff requested that we review the subject information and identify a potential violation of the Atomic Energy Act for the issue of mixed fuel pellets at the CE Nuclear Power, LLC, Hematite Missouri Plant. The Fuel Cycle Branch has completed this review and identified three potential violations. The first is a violation against 10 CFR 70.10(a)(1) "Deliberate Misconduct," and is appropriate if a saboteur is identified. The second violation is against the facility's license, and does not require identifying a particular individual. The third violation is against the Atomic Energy Act, and is appropriate for criminal prosecution.

Enclosures: As stated (3)

CONTACT: D. Roth, DNMS
(630)829-9832

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5
FOIA- 2004-0234

mm-4
A copy of this
NOV was
provided to OE
11/14/00 -
AKK

10-31-00 10:20 IN

(8)

This violation is applicable if an actual saboteur is identified.

CE Nuclear Power, LLC
Hematite, Missouri

DRAFT NOV

License No. SNM-33
Docket No. 070-00036

10 CFR 70.10(a)(1) "Deliberate misconduct" states that an employee of a licensee who knowingly provides to any licensee services that relate to a licensee's activities, may not engage in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

Deliberate misconduct by a person means an intentional act that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

Safety Condition S-1, "Authorized Use" of License No. SNM-33 requires, in part, that the licensee use licensed radioactive materials in accordance with the statements, representations, and conditions in Chapters 1 through 8 of the application dated October 29, 1993 and its supplements. Section 2.6, "Operating Procedures," of the application, dated August 8, 1997, stated,

Operations which affect licensed material shall be conducted in accordance with approved written procedures.

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A. Kock

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This violation is applicable if no saboteur is identified.

CE Nuclear Power, LLC
Hematite, Missouri

DRAFT NOV

License No. SNM-33
Docket No. 070-00036

Safety Condition S-1, "Authorized Use" of License No. SNM-33 requires, in part, that the licensee use licensed radioactive materials in accordance with the statements, representations, and conditions in Chapters 1 through 8 of the application dated October 29, 1993 and its supplements. Section 2.6, "Operating Procedures," of the application, dated August 8, 1997, stated,

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This violation is for a criminal violation of the US Code. Please note that OI should consult with OGC and/or DOJ to determine whether United States Code Title 42, Section 2284 applies.

CE Nuclear Power, LLC
Hematite, Missouri

DRAFT NOV

License No. SNM-33
Docket No. 070-00036

United States Code Title 42, Section 2284, "Sabotage of nuclear facilities or fuel," states,

(a) Physical damage to facilities, etc.

Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to--

...

(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility; or

...

shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

(b) Unauthorized use or tampering with facilities, etc.

Any person who intentionally and willfully causes or attempts to cause an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

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