



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

April 6, 2006

EA-06-079

Mr. Russell B. Starkey
Vice President, Operations
United States Enrichment Corporation
Two Democracy Center
6903 Rockledge Drive
Bethesda, MD 20817

SUBJECT: ALLEGED DISCRIMINATION (U.S. DEPARTMENT OF LABOR, OFFICE OF ADMINISTRATIVE LAW JUDGES CASE NO. 2004-ERA-0001)

Dear Mr. Brown:

On January 27, 2006, the U.S. Department of Labor (DOL), Office of Administrative Law Judges (ALJ) concluded in its Recommended Decision and Order (Case No. 2004-ERA-0001) that the United States Enrichment Corporation (USEC) discriminated against a former employee for raising nuclear safety issues at the Paducah Gaseous Diffusion Plant (Paducah). Separately, the ALJ decision did not find that the former employee's engagement in protected activities contributed to a contractor's failure to subsequently employ him. USEC and the employee have each appealed portions of the ALJ decision to the DOL Administrative Review Board (ARB), and those appeals are pending.

The U.S. Nuclear Regulatory Commission's (NRC), Office of Investigations (OI), had conducted an investigation into these matters (OI Report 3-2002-040). Based on the information obtained during the OI investigation, the NRC did not substantiate the allegation that the former employee was suspended and later terminated for raising safety concerns; however, based on the facts and circumstances described in the OI Report, the NRC was concerned that the employee may have been discriminated against by not being considered for the contractor position. By letter dated September 29, 2004, the NRC offered USEC an opportunity to attend a predecisional enforcement conference or request alternative dispute resolution (ADR) to address the second concern. The NRC and USEC participated in an ADR session on November 22, 2004, which resulted in the issuance of a Confirmatory Order dated January 27, 2005. The ADR session and the Order did not address the concern related to the former employee's suspension and later termination for raising safety concerns.

The NRC has reviewed the ALJ Decision, and as is our practice, we will monitor the DOL ARB proceedings to determine whether or not revisiting the matter of the employee's suspension and later termination is warranted. We recognize that USEC may not believe that unlawful discrimination has occurred. However, the NRC is concerned that, because of the ALJ decision, there exists the potential for a chilling effect on the safety conscious work environment at the Paducah facility. Specifically, our concern is that Paducah employees could be reluctant to identify or raise potential safety concerns for fear of similar retaliation. Therefore, as previously discussed with Shahram Ghasemian of your staff, the NRC is requesting that you provide this office, within 30 days of the date of this letter, a response in writing that describes the actions you have taken or plan to take to assure that there is not a chilling effect on the

willingness of your employees to raise safety and compliance concerns within your organization or to the NRC. Based on the broad corrective actions USEC agreed to during the ADR session, I am confident that your actions to address this concern will be just as comprehensive and focused. Please provide your written response to me at the U.S. Nuclear Regulatory Commission, Mail Stop O-14E1, 11555 Rockville Pike, Rockville MD 20852. After reviewing your response, the NRC will determine whether any further action is warranted at this time.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," 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), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

For questions concerning this letter, please contact Mr. Russell Arrighi, NRC, Office of Enforcement at 301-415-0205 or via e-mail at rja1@nrc.gov.

Sincerely,

/RA/

Michael R. Johnson, Director
Office of Enforcement

Docket No.: 070-07001

Certificate No.: GDP-1

cc: 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

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bcc: U.S. Department of Labor/OSHA
201 Varick Street
New York, NY 10014

Distribution:

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