

CASE No. 4-97-046

United States
Nuclear Regulatory Commission



Report of Investigation

UNITED NUCLEAR CORPORATION:

FALSIFICATION OF WINDBLOWN TAILING
SURVEYS AND DISCRIMINATION FOR
IDENTIFYING SAFETY CONCERNS

Office of Investigations

Reported by OI: **RIV**

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Title: UNITED NUCLEAR CORPORATION:

FALSIFICATION OF WINDBLOWN TAILING SURVEYS AND DISCRIMINATION FOR IDENTIFYING SAFETY CONCERNS

Licensee:

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SYNOPSIS

This investigation was initiated on August 19, 1997, by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine whether a supervisor at United Nuclear Corporation (UNC), an NRC licensee, deliberately falsified radiation survey records of the windblown tailings. Additionally, it was alleged that a UNC supervisor harassed a former UNC employee [redacted] reported safety concerns to the NRC. nc

Based on the evidence, testimony, and review by the RIV technical staff and the Regional Counsel during this investigation, the allegation that a UNC supervisor deliberately falsified radiation survey records of windblown tailings was not substantiated. Additionally, the allegation that a UNC supervisor harassed the former UNC employee [redacted] after the employee reported safety concerns to the NRC was not substantiated.

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DETAILS OF INVESTIGATION

Allegation

Falsification of Windblown Tailing Surveys and Discrimination for Identifying Safety Concerns

Applicable Regulations

10 CFR 40.7: Employee Protection (1996 Edition)

10 CFR 40.9: Completeness and accuracy of information (1996 Edition)

10 CFR 40.10: Deliberate Misconduct (1996 Edition)

Purpose of Investigation

This investigation was initiated on August 19, 1997, by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine whether [redacted] / United Nuclear Corporation (UNC), an NRC licensee, deliberately falsified radiation survey records of windblown tailings. Additionally, it was alleged that [redacted] harassed [redacted] UNC, and [redacted] after he reported safety concerns to the NRC (Exhibit I).

Background

On July 8, 1997, Levon BENALLY, with the Navajo Superfund Project, informed the NRC, Nuclear Material Safety and Safeguards (NMSS), staff of concerns he had received from [redacted] about UNC's Church Rock site.

On July 31, 1997, Robert O'CONNELL, Allegation Coordinator, NMSS, NRC, in a letter to [redacted] summarized [redacted] concerns: (1) UNC records concerning windblown tailings [specifically the radiation survey taken after the tailings had been cleaned up] were intentionally falsified at the direction of [redacted] to show that radiation levels were down to acceptable levels instead of the elevated levels given by the instruments; and (2) [redacted] were harassed after he reported the

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concern to UNC management and after he was [redacted] concerns were forwarded by NMSS to the RIV Senior Allegation Coordinator (SAC).

Coordination with NRC Staff

On August 18, 1997, the RIV Allegation Review Board reviewed [redacted] concerns and requested OI:RIV interview [redacted]

AGENT'S NOTE: [redacted] was an alleger in a previous OI:RIV investigation, Deliberate Violation of Procedures and Falsification of Employee Records, OI Case No. 4-96-022, issued on November 25, 1996, that was not substantiated.

Interview of Alleger [redacted] (Exhibit 2)

Interviewed on September 29, 1997, [redacted] said he had worked at UNC in 1985 for 6 months and in 1986 for 3 months. [redacted] said the last period he worked for UNC was from 1988 until he was [redacted] Edward MORALES, General Mill Foreman, UNC, on [redacted] said he was [redacted] on the mill site's properties. [redacted] said that he saw the falsification or records concerning the cleanup of windblown tailings approximately 3 to 4 years ago [1994]. [redacted] said on at least two occasions, he witnessed [redacted] gather up incomplete daily inspections of the radiation survey work forms for the windblown tailings and fill them out at a later time; although according to [redacted] UNC procedures required the inspection forms to be completed daily.

[redacted] said he did not discuss any safety concerns while he was employed at UNC, and he was never harassed or intimidated while he worked at UNC. [redacted] said after he was [redacted] he reported safety concerns to the NRC in April 1996.

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Evidence/Testimony

Interview of [redacted] (Exhibit 3)

On September 30, 1997, [redacted] provided a signed, sworn statement to the NRC regarding allegations of deliberate falsification of records concerning the radiation surveys taken after the windblown tailings had been cleaned up, at his [redacted] direction. [redacted] said the windblown tailings work was completed in about 2 weeks, in 1994 or 1995, and [redacted] said he directed two employees [redacted] said one person was [redacted] but was unsure of the other persons identity, where to dig and what material to remove. [redacted] said he normally filled out the UNC paperwork accurately and on a daily basis and never falsified UNC documents.

[redacted] also addressed the allegation of harassment that [redacted] made to the NRC and said he [redacted]

Evidence/Documents

Navajo Department of Public Safety, Arrest Report, [redacted] (Exhibit 4)

This report relates the events of [redacted]

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Coordination with NRC Staff

On October 17, 1997, William BROWN, Regional Counsel, NRC:RIV, reviewed the transcript of OI's interview with [redacted] (Exhibit 2) the sworn statement by [redacted] (Exhibit 5) and the related police report (Exhibit 4). BROWN said

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Ex 5
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On December 23, 1997, the RIV:SAC informed OI:RIV that the staff's review of the transcript of interview revealed no issues that required additional NRC review (Exhibit 6).

Agent's Analysis

The allegation pertaining to the deliberate falsification of records concerning the radiation surveys taken after the windblown tailings had been cleaned up, at the direction of [redacted] was not substantiated. [redacted] refuted the allegation, stating that he had never falsified survey records or directed anyone to falsify any survey records. The information acquired by OI:RIV was reviewed by the NRC technical staff who determined there were no issues that required additional NRC review. Therefore, this allegation was unsubstantiated.

Analysis of Evidence

An analysis of evidence was performed to examine the factors involved to determine if [redacted] was subjected to harassment for raising a safety concern to the NRC.

1. Protected Activity

[redacted] was formerly employed at UNC [redacted] and was [redacted] [redacted] alleged safety concerns to the NRC on April 16, 1996, which resulted in an OI:RIV investigation, and the allegations were not substantiated. However, he [redacted] did not identify any alleged violations until [redacted]

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2. Management's Knowledge of Protected Activity

One year and four days after [redacted]

[redacted] he reported safety concerns to the NRC. Prior to the OI investigation initiated in April 1996, there is no record of [redacted] coming to the NRC or any other government agencies with health and safety concerns. There is no evidence that anyone in UNC was aware that [redacted] had contacted the NRC until after [redacted] and subsequent OI investigation.

The 1996 [redacted]

The 1996 [redacted]

[redacted] incident at [redacted]

[redacted] July 8, 1997. Therefore, an adverse employment action as defined in 10 CFR 40.7 was not found to have been initiated against [redacted] allegations made to the NRC on [redacted]

Conclusions

Based on the evidence, testimony, and review by the RIV technical staff and the Regional Counsel during this investigation, the allegation that [redacted] deliberately falsified radiation survey records of windblown tailings was not substantiated. Based on the evidence and testimony developed during this investigation and a review by the RIV technical staff and the Regional Counsel, the allegation that [redacted] reported safety concerns to the NRC was not substantiated.

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, dated August 19, 1997.
2	Transcript of Interview with [redacted] dated September 29, 1997.
3	Signed Sworn Statement of [redacted] dated September 29, 1997.
4	Navajo Department of Public Safety Arrest Report [redacted]
5	NRC E-Mail from BROWN to VVC, dated October 16, 1997.
6	NRC E-Mail from CAIN to RXW, dated October 22, 1997.

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