

June 2, 2006

EA 06-121; EA-05-104

Mr. E. Kurt Hackman
Project Director, Decommissioning
Westinghouse Electric Company, LLC
Hematite Fuel Manufacturing Facility
3300 State Road P
Festus, MO 63028

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION [NRC TEAM INSPECTION REPORT NO. 07000036/2005-001(DNMS) AND OFFICE OF INVESTIGATIONS REPORT NO. 3-2005-002] - WESTINGHOUSE ELECTRIC COMPANY, LLC (HEMATITE)

Dear Mr. Hackman:

This refers to the team inspection conducted by the U.S. Nuclear Regulatory Commission (NRC) at the Westinghouse Electric Company's Hematite Former Fuel Manufacturing Facility, Festus, Missouri. The inspection was completed on April 27, 2005, and included a review of nuclear criticality safety controls implemented during decommissioning and decontamination activities. The details of the inspection were documented in NRC Inspection Report No. 07000036/2005-001(DNMS) and the report was sent to Mr. Hank Sepp on June 8, 2005. Several violations associated with the procedures implementing the criticality safety controls were identified during the inspection and a predecisional enforcement conference was held on June 22, 2005. The NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$16,250 (Notice) to Westinghouse on August 25, 2005 (EA-05-104). Mr. Hank Sepp responded for Westinghouse to the Notice and paid the civil penalty on September 22, 2005.

In addition to the violations cited in the Notice, the Inspection Report described an unresolved item (URI) that also pertained to nuclear criticality safety controls (URI-07000036/2005-001-01). The URI concerned the sufficiency of samples collected for determination of the assay of uranium-235 contents and information was developed at the time of the inspection that indicated a possible willful violation of the Westinghouse procedure associated with implementation of the assay sampling plan. The NRC Office of Investigations (OI) conducted an investigation of the potential willful failure to obtain the requisite number of assay samples. The OI investigation did not substantiate that employees of Westinghouse willfully failed to complete the required sample collection and analysis prior to commencing decommissioning work at the Hematite facility. The synopsis of the OI report is enclosed.

Based on the information developed during the inspection, the NRC has determined that a violation of NRC requirements occurred. The circumstances surrounding the violation are described in detail in the subject inspection report. In summary, Westinghouse Procedure No. NISYS-NCS-1180-TR006, "Sample Collection and Analysis Plan for U-235 Enrichment Verification for the Primary Interference Removal Project at the Westinghouse Electric

Corporation Hematite Facility,” a procedure required by License Condition No. 17 of NRC License No. SNM-33, provided, in part, that 59 valid samples of material be obtained and analyzed prior to initiating fissile material handling operations. However, Westinghouse began handling fissile material throughout the Hematite facility after obtaining only eight samples. As a result, decommissioning activities began without sufficient information to determine the uranium-235 enrichment and without sufficient engineering or administrative controls to ensure nuclear criticality safety during fissile material operations. Therefore, this violation, in conjunction with the violations previously cited in the August 25, 2005, Notice (EA-04-105) would be categorized in accordance with the NRC Enforcement Policy as a Severity Level III problem. The current Enforcement Policy is included on the NRC’s Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**.

Since this violation is an additional example of those that were previously cited on August 25, 2005, I have been authorized, after consultation with the Director, Office of Enforcement and the Regional Administrator, to exercise enforcement discretion in accordance with Section VII.B.6 of the NRC Enforcement Policy and not cite this additional violation. Significant violations in the future could result in escalated enforcement action.

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 was achieved is already adequately addressed on the docket in Inspection Report No. 070-00036/2005-001(DNMS) and Westinghouse’s September 22, 2005 letter. We have concluded that there is sufficient information for us to close unresolved item URI-07000036/2005-001-01. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, clearly mark your response as a “Reply to an Exercise of Enforcement Discretion, EA-06-121” and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator and the Enforcement Officer, Region III, and a copy to the Resident Inspector at the Fermi facility, within 30 days of the date of this letter. If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Please contact Jamnes Cameron, Chief Decommissioning Branch, with questions. Mr. Cameron can be reached at telephone number (630) 829-9833.

In accordance with 10 CFR 2.390 of the NRC’s “Rules of Practice,” a copy of this letter, its enclosure, and your response (should you choose to respond) 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

E. Kurt Hackman

- 3 -

redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Steven A. Reynolds, Director
Division of Nuclear Materials Safety

Docket No. 070-00036
License No. SNM-00033

Enclosure:
Synopsis of OI Report No. 3-2005-002

cc w/encl: M. J. Saunders, Westinghouse
A. J. Nardi, Westinghouse
T. Chance, Westinghouse

FILE NAME: G:\EICS\06-121 Westinghouse - Hematite MO Exercise of Enforcement Discretion

Publicly Available Non-Publicly Available Sensitive Non-Sensitive

To receive a copy of this document, indicate in the box: "C" = Copy w/o att/encl "E" = Copy w/att/encl "N" = No copy

OFFICE	RIII	E	OI:RIII ¹	E	NMSS	E	OE	E	RIII	N	RIII ²	E
NAME	K O'Brien for Weil		Paul		Morell		Burrell		O'Brien		Reynolds	
DATE	6/2/06		6/2/06		05/30/06		06/01/06		6/2/06		6/2/06	

OFFICIAL RECORD COPY

¹ Concurrence limited to approving release of OI report synopsis.

² Consultation with Regional Administrator documented in 05/26/2006 memorandum to the Office of Enforcement.

SYNOPSIS

This investigation was initiated on January 8, 2005, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if the licensee, Westinghouse Electric Company (Westinghouse), willfully failed to complete required sample collection and analysis of fissile material prior to commencing decommissioning work.

Based upon the evidence developed, the investigation did not substantiate the allegation that Westinghouse willfully failed to complete the required sample collection and analysis prior to commencing decommissioning work.

Case No. 3-2005-002

Enclosure

Letter to H. Sepp from S. Reynolds dated June 2, 2006

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION

DISTRIBUTION:

ADAMS (PARS)

SECY

OCA

L. Reyes, EDO

M. Virgilio, DEDMRS

M. Johnson, OE

D. Solorio, OE

D. Starkey, OE

J. Caldwell, RIII

G. Grant, RIII

L. Chandler, OGC

B. Jones, OGC

J. Strosnider, NMSS

G. Morell, NMSS

C. M. Craig, NMSS

T. Smith, NMSS

D. Holody, Enforcement Officer, RI

C. Evans, Enforcement Officer, RII

K. O'Brien, Enforcement Officer, RIII

K. Fuller, Enforcement Officer, RIV

E. Brenner, OPA

H. Bell, OIG

G. Caputo, OI

J. Schlueter, OSTP

S. Reynolds, RIII

G. Shear, RIII

J. Cameron, RIII

C. Weil, RIII

P. Pelke, RIII

D. Chyu, RIII

J. Strasma, RIII:PA

R. Lickus, RIII

J. Lynch, RIII

R. Paul, OI:RIII

M. Hannan, OI:RIII

N. Hane, OI:RIII

OEWEB

OEMAIL

OAC3

State of Missouri