

EDO Principal Correspondence Control

FROM: DUE: / /

EDO CONTROL: G20060875

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FINAL REPLY:

Joe Carson  
Knoxville, Tennessee

TO:

Commission

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO: 06-0535

DESC:

Impediments to Nuclear Safety and a Safety-  
Conscious Work Environment in NRC - Legal  
Ethics at U.S. Office of Special Counsel

ROUTING:

Reyes  
Virgilio  
Kane  
Silber  
Johnson  
Burns  
Cyr, OGC

DATE: 10/26/06

ASSIGNED TO:

CONTACT:

EDO

Landau

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

Date Printed: Oct 23, 2006 16:24

PAPER NUMBER: LTR-06-0535  
ACTION OFFICE: EDO/OGC

LOGGING DATE: 10/23/2006

AUTHOR: Joe Carson  
AFFILIATION: TN  
ADDRESSEE: Dale Klein

SUBJECT: Impediments to nuclear safety and a safety-conscious work environment in NRC resulting from a meltdown of legal ethics at US Office of Special Counsel

ACTION: ~~Direct Reply~~ Appropriate  
DISTRIBUTION: Chairman, Comrs, SECY to Ack

LETTER DATE: 10/16/2006

ACKNOWLEDGED No

SPECIAL HANDLING: Made publicly available in ADAMS via SECY/DPC

NOTES:

FILE LOCATION: ADAMS

DATE DUE: ~~11/15/2006~~

DATE SIGNED:

October 16, 2006

Chairman Dale Klein  
Commissioner Edward McGaffigan, Jr  
Commissioner Jeffrey Merrifield  
Commissioner Gregory Jaczko  
Commissioner Peter Lyons  
Nuclear Regulator Commission (NRC)  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

Re: Impediments to Nuclear Safety and a Safety-Conscious Work Environment (SCWE) in NRC resulting from a "meltdown" of legal ethics at US Office of Special Counsel.

Dear NRC Chairman and Commissioners,

I do not think any nuclear professional, licensed professional engineer (P.E.), or federal employee has "prevailed" in more whistleblower-related litigation than I. I have run the gauntlet in Department of Energy for too many years for doing nothing more or less than my positive legal and professional duty - my "doubly sworn" duty as a P.E. and federal employee - to "blow whistles," when necessary to protect public health and safety. Google my name, if you wish, for more details.

I have reason to hope 15 years of *Carson v. Department of Energy* (DOE) is coming to an end in which a "meltdown" of legal ethics in the U.S. Office of Special Counsel (OSC), implicating possibly hundreds of licensed attorneys, will be openly acknowledged by a Federal Court and the legal profession. *Carson v. DOE* occurred in a context in which the U.S. Office of Special Counsel (OSC) and its licensed attorneys (40% of its staff of about 110 are licensed attorneys, there has always been a significant staff turnover rate), repeatedly failed to comply with its and their statutory duties to protect me from retribution in DOE.

Unlike DOE, OSC did not single me out. its and its licensed attorneys lawbreaking failure to protect me is relevant to thousands of other federal employees (likely including numerous NRC employees) who have sought OSC's protection since it was created as an independent agency in 1989, for the primary purpose of protecting federal employees from exactly what has repeatedly happened to me. These OSC's attorneys are "doubly sworn" - as attorneys and federal employees - to "blow whistles" when necessary to ensure OSC complies with its statutory duty to protect the federal employees. Additionally, the attorneys who represented clients who sought OSC's protection and did not receive the protection the law requires OSC provide, had a positive legal and professional obligation, "as zealous advocates" of their clients' welfare to "blow whistles," on OSC's and OSC's attorneys lawbreaking.

None of this happened, not in 17 years during which about 25,000 federal employees have sought OSC's protection. At this point, I think I am about finished with a several year-long "sting operation" on OSC, its licensed attorneys, and other attorneys who "looked the other way" at OSC's and OSC's attorneys lawbreaking. I hope I have persuaded the presiding Federal Judge of his positive legal and professional duty to "blow whistles" on all this lawbreaking and professional malfeasance. (Some of OSC's systemic and persistent lawbreaking is detailed at <<http://whsknox.blogs.com/osc>>.)

So what relative to your responsibilities to public safety? Just as NRC licensees depend, at least in part, on NRC and DOL employees doing their jobs without fear of reprisal in protecting licensee whistleblowers, as part of their having a viable SCWE; the NRC depends, at least in part, on OSC and OSC's attorneys to do their duty in protecting NRC employees from retribution for the NRC to have a viable SCWE

Additionally, I suggest at least part of of the quality issues at Yucca Mountain can be placed at the feet of OSC and its licensed attorneys, just as 9/11, the failure of levees in New Orleans, loss of Columbia Space Shuttle, and any number of other instances of federal malfeasance or incompetence.

I have been all over Capital Hill in past few years and have been unable to find anyone who can state, based on results of Congressional or other third party oversight of OSC, that if a federal employee takes risks to uphold and defend the merit system principles of the federal civil service, that they have reasonable grounds to believe OSC will comply with its statutory duty to protect them. I think that is unacceptable, it also means you have no objective basis to make such a statement to any NRC employee. So when Congress criticizes the NRC about safety, I suggest you criticize Congress for its lack of oversight of OSC. Specifically, DOE's long-touted policy of "zero tolerance for reprisal," is inoperative, for no other reason than it depends on OSC for its implementation - if an DOE employee alleges reprisal, he is advised to seek protection from OSC and told DOE does not have jurisdiction to investigate such an allegation. I presume the same is true in NRC.

I presume Chairman Klein is or was a P.E. I was influential in ANS issuing a new membership code of ethics and a public position advocating P.E. licensure by engineers employed in nuclear facilities. I do not understand why NRC does not phase in (with grand fathering) a requirement that its experienced engineers be licensed and its senior health physicists be certified health physicists (CHP's). If the NRC required it, as a condition of employment, then these employees would have additional legal grounds to obtain protection, by the merit system principles, if they o "blew whistles" or took other action, to comply with their P.E. licensure or CHP requirements.

I leave you with two suggestions:

- 1) Conduct and publicize the results of surveys measuring SWCE in NRC which include perceptions about OSC performance in protecting NRC employees from retribution.

2) Engage the engineering profession and other stakeholders in a dialogue about implementing a policy requiring experienced NRC engineers to be licensed.

Thank you for your attention. If and when the Federal Court takes significant exception to OSC's and its attorneys compliance with it and their statutory obligations to protect me from reprisal in DOE, I think you will hear of it and, I hope, "take it to heart" for what it implies about an SCWE in NRC and your responsibilities for public health and safety.

Respectfully,



Joe Carson, P.E.

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