



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

April 13, 2007

IA-06-043

Mr. Robbie E. Balentine
[Home Address Removed per
10 CFR 2.390]

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY) (OFFICE OF
INVESTIGATIONS REPORT NUMBER 2-2005-006)

Dear Mr. Balentine:

The enclosed Confirmatory Order is being issued to you as part of a settlement agreement between you and the Nuclear Regulatory Commission (NRC). The agreement resolves an apparent violation of the NRC's deliberate misconduct rule, 10 CFR 50.5, that was identified during the subject Office of Investigations (OI) investigation. You were advised of this apparent violation by our letter of August 3, 2006. Our August 3rd letter also informed you that the apparent violation was associated with your actions, as Lead Foreman, Stone and Webster Engineering Company (SWEC), to willfully direct and allow unauthorized open blasting (i.e., vacuum blasting on non-flat surfaces) to be performed inside the torus of the Browns Ferry Nuclear Plant, Unit 1 in January and February of 2004.

As a result of the OI finding and in accordance with the NRC Enforcement Policy and associated processes, you were offered the opportunity to: 1) attend a predecisional enforcement conference to discuss the apparent violation; or 2) provide a written response to the apparent violation; or 3) request to participate in the NRC's Alternative Dispute Resolution (ADR) pilot program in an attempt to resolve the apparent violation. As we advised in our letter of August 3, 2006, ADR is a general term encompassing various techniques for resolving conflicts outside of court using a neutral third party. Mediation is the technique employed by the NRC during the pilot program. In response, you requested ADR, and a mediation session was held between you and the NRC in Huntsville, AL on October 16, 2006. Based on that session, you and the NRC reached a settlement agreement in principle.

At the session, you disagreed with the NRC's conclusion that you engaged in deliberate misconduct in violation of 10 CFR 50.5, and on this point, the parties agreed to disagree. It is the NRC's view that the evidence developed by OI is sufficient to establish that the violation of 10 CFR 50.5 occurred. However, in light of the corrective actions you have agreed to take as described in the attached Confirmatory Order, the NRC will not pursue individual enforcement action against you, nor does the NRC take a position regarding your suitability for re-employment at NRC licensed facilities.

We note that, pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Confirmatory Order shall be subject to criminal prosecution as set forth in that section.

Mr. Robbie Balentine

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, with your address removed, and its enclosure 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>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **Public Meetings and Involvement**, then **Enforcement**, then **Significant Enforcement Actions**.

This letter will be maintained by the NRC's Office of Enforcement (OE) in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

If you have any questions or comments concerning this letter, please contact Ms. Carolyn F. Evans, Region II Enforcement Officer and Regional Counsel, at 404-562-4414.

Sincerely,

/RA/

William D. Travers
Regional Administrator

Enclosure: As Stated
cc with enclosure:

Mr. Richard Carrigan
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One Federal Place, Suite 1000
1819 Fifth Avenue North
Birmingham, AL 35203-2118

Browns Ferry Nuclear Plant
Tennessee Valley Authority
ATTN.: Mr. K. W. Singer
Chief Nuclear Officer and
Executive Vice President
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

Brian O'Grady
Site Vice President
Browns Ferry Nuclear Plant
Tennessee Valley Authority
Electronic Mail Distribution

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Mr. Robbie Balentine

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IA-06-043

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Mr. Robbie Balentine was employed by Stone and Webster Engineering Company (SWEC) in January and February of 2004, as a Lead Foreman and worked at Tennessee Valley Authority's (TVA) Browns Ferry Nuclear Plant.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) session conducted on October 16, 2006.

II

An investigation was initiated by the NRC Office of Investigations (OI) on February 9, 2005, to determine whether Mr. Balentine engaged in deliberate misconduct while acting in his official capacity as Lead Foreman for SWEC at TVA's Browns Ferry Nuclear Plant, Unit 1. The investigation was initiated in response to an internal contamination event involving a painter who was employed by SWEC in January and February of 2004 at Browns Ferry Plant, and who worked under Mr. Balentine's immediate supervision. This individual was one of a number of painters assigned to perform paint removal activities inside the Unit 1 torus at Browns Ferry. In its report of investigation, OI found that Mr. Balentine willfully directed and allowed open blasting (i.e., vacuum blasting on non-flat surfaces) to be performed in areas of the Unit 1 torus in apparent violation of the requirements of a Radiation Work Permit (RWP) and verbal

instructions provided by Radcon. On the basis of the results of the OI investigation, the NRC determined that Mr. Balentine's actions also constituted an apparent violation of 10 CFR 50.5, "Deliberate misconduct." This regulation states, in relevant part, that an employee of a licensee or contractor for a licensee who provides goods or services that relate to a licensee's activities conducted under Part 50, may not engage in deliberate misconduct that causes 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.

The terms of the license Mr. Balentine caused TVA to violate are the Browns Ferry Nuclear Plant procedures associated with radiation protection. Browns Ferry Nuclear Plant Technical Specification 5.4.1.a, requires written procedures to be established, implemented, and maintained covering the applicable procedures recommended in Regulatory Guide 1.33. Appendix A, Paragraph 7.e. of Regulatory Guide 1.33 recommends the development and implementation of radiation protection procedures to address access control to radiation areas including a radiation work permit system. TVA Nuclear Standard Department Procedure RCDP-3, Administration of Radiation Work Permits, Paragraph 3.6.3, Revision 2, provides that a worker must receive an RWP briefing from RadCon before use [of the RWP] and that the worker must agree to comply with the RWP requirements as well as verbal instructions given by RadCon. The RWP at issue in this case, RWP Number (No.) 04112101, Worker Instruction No. 13, provided that RadCon's permission was required prior to welding, grinding, buffing or other surface disturbing activities. Pursuant to this RWP, the verbal instructions provided by Radcon to painters and their supervision during pre-job briefings associated with paint removal activities inside the Unit 1 torus specified that, due to radiation contamination hazards, the anti-contamination clothing specified in the RWP, including dust mask covers, was appropriate

during vacuum blasting. Open blasting and vacuum blasting on non-flat surfaces was expressly prohibited by Radcon.

Notwithstanding the requirements of the RWP and RadCon's verbal instructions, Mr. Balentine directed and allowed open blasting (i.e., vacuum blasting on non-flat surfaces) to be performed in areas of the Unit 1 torus. As a result, Mr. Balentine caused TVA, an NRC licensee, to be in violation of regulatory requirements.

III

In a letter dated August 3, 2006, the NRC notified Mr. Balentine of the apparent violation of 10 CFR 50.5, and offered him the opportunity to request a predecisional enforcement conference, respond to the apparent violation in writing or request Alternative Dispute Resolution (ADR) with the NRC. In response, Mr. Balentine requested ADR. ADR is a process by which a neutral third party (i.e., a mediator) with no decision-making authority assists the parties in reaching a mutually acceptable resolution of a dispute.

An ADR session was held with Mr. Balentine and the NRC in Huntsville, Alabama, on October 16, 2006. During the ADR session, an agreement was reached which consisted of the following elements:

- I. On the basis of the evidence developed by OI, the NRC has concluded that Mr. Robbie Balentine engaged in deliberate misconduct in violation of 10 CFR 50.5 when he directed and allowed open blasting (i.e., vacuum blasting on non-flat surfaces) to be performed in areas of the Browns Ferry Nuclear Plant, Unit 1 torus in apparent violation

of the requirements of the RWP and RadCon verbal instructions which expressly prohibited this activity.

- II. Mr. Balentine disagrees with the NRC's conclusion that he deliberately violated 10 CFR 50.5, and the parties have agreed to disagree on this point, although the NRC maintains that the evidence developed by OI is sufficient to establish that the violation of 10 CFR 50.5 occurred.
- III. Mr. Balentine acknowledges that his communications to the painters who performed paint removal activities inside the Browns Ferry, Unit 1 torus were poor and failed to convey clear instructions or expectations. He accepts his obligation, as foreman, to provide clear instructions to employees working under his supervision, and he acknowledges that his communications to employees in the area of safe work practices must be especially clear and unequivocal.

The NRC and Mr. Balentine agree that the actions specified below are sufficient to address the NRC's concerns. Mr. Balentine agrees to issuance of a Confirmatory Order confirming this agreement, and also agrees to waive any request for a hearing regarding this Confirmatory Order. The Confirmatory Order will provide the following:

- A. Mr. Balentine agrees to follow all instructions, procedures and requirements which govern the performance of licensed activities or work in support of such activities and he will ensure that those individuals working under his supervision do so as well.
- B. Mr. Balentine agrees to participate in any initiatives the licensee, TVA, or its contractor, SWEC, establishes to address the consequences of procedural non-

compliances and improve safety culture. In this regard, Mr. Balantine agrees to speak to other supervisors and their staffs about the events which resulted in issuance of this Confirmatory Order, the communications failures/inadequacies that contributed to the event, and the importance of fostering an environment which encourages employees to raise safety or work related concerns.

- C. In light of Mr. Balentine's agreement as described above, the NRC agrees not to take any further action against Mr. Balentine regarding this matter, nor does the NRC take a position regarding Mr. Balentine's suitability for re-employment at NRC licensed facilities.
- D. Mr. Balentine understands that, as part of its normal process, the NRC will issue a press release with this Confirmatory Order. The NRC will provide Mr. Balentine a copy of the press release prior to its release.

On **[DATE HERE]** Mr. Balentine consented to issuance of this Confirmatory Order with the commitments, as described in Section IV below. Mr. Balentine further agreed in his **[DATE HERE]** consent and waiver that this Confirmatory Order is to be effective upon issuance and that he has waived his right to a hearing.

I find that Mr. Balentine's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Balentine's commitments be confirmed by this Order. Based on the above and Mr. Balentine's consent, this Confirmatory Order is immediately effective upon issuance.

Accordingly, pursuant to Sections 147, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Robbie Balentine shall follow all instructions, procedures and requirements, which govern the performance of licensed activities or work in support of such activities and ensure that those individuals working under his supervision do so as well.
2. Mr. Balentine shall participate in any initiatives the licensee, TVA or its contractor, SWEC, establishes to address the consequences of procedural non-compliances and to improve safety culture. In this regard, Mr. Balentine agrees to speak to other supervisors and their staffs about the event which resulted in issuance of this Confirmatory Order, the communications failures/inadequacies that contributed to the event, and the importance of fostering an environment which encourages employees to raise safety or work related concerns.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Balentine of good cause.

Any person adversely affected by this Confirmatory Order, other than Mr. Balentine, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration

will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW, Atlanta, Georgia, 30303, and to Mr. Balentine. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will

issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA: Victor M. McCree for/

William D. Travers
Regional Administrator

Dated this 13th day of March 2007