

May 2, 2007

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 AGAINST A FORMER QUALITY CONTROL
MANAGER AT THE UNITED STATES ENRICHMENT CORPORATION (U.S.
Department of Labor, Administrative Law Judges, Case No. 2004-ERA-0001)

Dear Mr. Starkey:

By letter dated April 6, 2006, the U.S. Nuclear Regulatory Commission (NRC) notified the United States Enrichment Corporation (USEC) that it would be monitoring a U.S. Department of Labor (DOL), Office of Administrative Law Judges (ALJ), case (Case No. 2004-ERA-0001) that was being reviewed by the DOL's Administrative Review Board (ARB). The case involved a former quality control (QC) manager at the Paducah Gaseous Diffusion Plant (PGDP) who claimed that he was discriminated against for raising safety concerns to management. Specifically, that he had been suspended and later terminated, and then several months later not hired for a contractor position at Paducah.

The NRC's Office of Investigations (OI) conducted an investigation (OI Report No. 3-2002-040) into the matters raised by the former QC manager. The NRC and USEC participated in an alternative dispute resolution (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 QC manager's suspension and termination, which had not been substantiated by the staff. The Occupational Safety and Health Administration (OSHA) also investigated the complaints and determined that they had no merit. The complainant appealed the OSHA finding, and on January 27, 2006, after an evidentiary hearing, the ALJ concluded in its Recommended Decision and Order (the ALJ Decision) that USEC fired the former QC manager because he had raised safety concerns. USEC and the complainant both appealed the ALJ's Decision to the ARB, and this appeal is still pending.

In the April 6, 2006, letter, the staff informed USEC of its intent to wait for the ARB's review of the Decision before taking any enforcement action related to the suspension and later termination of the QC manager. Because it is the NRC's desire to examine all relevant information, the staff still considers it appropriate to defer any decision to initiate enforcement action based on the ALJ Decision until the ARB has completed its review.

As you may be aware, Title 28 of the U. S. Code, Section 2462, "Time for Commencing Proceedings," applies to NRC enforcement actions, and requires that the NRC propose any civil penalty; or issue any Order to prohibit involvement in NRC-licensed activities or impose any other sanction, within 5 years of the date of the violation. Based on our review of the

circumstances of this case, the alleged discrimination occurred on November 22, 2002. Therefore, the 5-year statute of limitations (SOL), as it applies to this case, would expire on November 22, 2007. Because of the protracted and indeterminate schedule for completion of the ARB's review, it is likely that the 5-year SOL will expire before an ARB decision is issued.

In order for the NRC to continue to defer its decision on initiating enforcement action based on a final DOL decision, the NRC requests that USEC waive the 5-year SOL for NRC enforcement action in this matter. Should you agree to waive the 5-year SOL, your right to request a hearing on the imposition of civil penalties or any other order in this matter would be preserved. In addition, your agreement to waive the 5-year SOL does not in any way constitute or imply an admission of discrimination by USEC or its employees.

The NRC requests that USEC consider this request and inform my office in writing of your decision, with a copy to Mr. William Travers in our Region II Office, within 14 days of receipt of this letter. Should you determine that it is not in USEC's best interest to waive the 5-year SOL, the NRC will reconsider the need for initiation of enforcement action based on the ALJ's Decision dated January 27, 2006, and on information available to us at this time.

If you have any questions regarding this request to waive the 5-year SOL, please contact Mr. Russell Arrighi, Enforcement Specialist, at (301) 415-0205.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, and your response, if you choose to provide one, 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>.

Sincerely,

/RA/ Cheryl Montgomery, for
Cynthia A. Carpenter, Director
Office of Enforcement

Docket No.: 070-07001
Certificate No.: GDP-1

cc: S. Penrod, General Manager, USEC PGDP
V. Shanks, Regulatory Affairs Manager, USEC PGDP
S.A. Toelle, Director, Nuclear Regulatory Affairs, USEC
A. Lear, Deputy General Counsel, 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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