



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
SAM NUNN ATLANTA FEDERAL CENTER  
61 FORSYTH STREET, SW, SUITE 23T85  
ATLANTA, GEORGIA 30303-8931

May 13, 2009

IA-09-032

Mr. Frank B. Mitchell  
**[NOTE: HOME ADDRESS DELETED  
UNDER 10 CFR 2.390]**

SUBJECT: NOTICE OF VIOLATION AND EXPIRATION OF LICENSE

Dear Mr. Mitchell:

The Nuclear Regulatory Commission (NRC) has received a letter dated April 1, 2009, from South Carolina Electric & Gas (SCE&G), informing us that SCE&G no longer has a need to maintain your operating license for the Virgil C. Summer Nuclear Station. We also received a letter dated April 3, 2009, from SCE&G containing information about your confirmed positive test for alcohol and marijuana following for cause testing on February 25, 2009. We plan to place both of the letters from SCE&G in your 10 CFR Part 55 docket file.

In accordance with 10 CFR 55.55(a), the determination by your facility licensee that you no longer need to maintain a license has caused your license SOP-20291-5 to expire as of April 1, 2009. In addition, the following violation is being issued on your docket:

10 CFR 55.53(d) requires that each license is subject to, and the licensee shall observe all applicable rules, regulations, and orders of the Commission.

10 CFR 26.10(a) requires, in part, that nuclear power plant personnel perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, which in any way adversely affects their ability to safely and competently perform their duties. 10 CFR 26 Appendix A, Subpart B, paragraph 2.7(f)(2) specifies, in part, a confirmatory test cut-off level for alcohol of 0.04% Blood Alcohol Concentration (BAC) and a confirmatory test cut-off lever for marijuana metabolite of 15 nanograms (ng)/ml.

10 CFR 26.20 , "Written policy and procedures" requires, in part, that each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part.

Station Administrative Procedure (SAP)-1013, "Fitness for Duty Program," was established to meet the requirements identified in 10 CFR 26.20. SAP-1013 states that it is the "written policy to meet the general performance objectives and specific requirements of 10 CFR 26 to provide a work place free from drugs and alcohol and the effects of such substances, and ensure that personnel subject to this policy are not illegally under the influence of any substance, or mentally or physically impaired..." In addition, SAP-1013 states, in part, that testing for the substances identified in 10 CFR 26 will be performed as specified in Fitness for Duty (FFD) 100, "Chemical Test Requirements." FFD-100, Section 5.1.3, specifies, in part, a confirmatory test cut-off level for marijuana metabolite of 10 ng/ml.

Contrary to the above, on February 25, 2009, you reported for requalification training, which is required by 10 CFR 55.59 for an NRC licensed senior reactor operator, while under the influence of alcohol and marijuana. Specifically, you attended training at the Virgil C. Summer Nuclear Station with a BAC of 0.095%, which exceeded the cutoff level for alcohol (0.04% BAC). The BAC level identified exceeded the cutoff level contained in 10 CFR Part 26. Testing also confirmed that you attended training with a marijuana metabolite level of 11ng/ml, which exceeds the cutoff level identified for marijuana (10 ng/ml) in Virgil C. Summer Nuclear Station FFD-100.

This is a Severity Level III violation (Supplement I).

The purpose of the Commission's Fitness-for-Duty requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free of drugs and alcohol and the effects of the use of these substances. The use of illegal drugs is a serious matter which undermines the special trust and confidence placed in you as a licensed operator. This violation is categorized as a Severity Level III violation in accordance with the NRC Enforcement Policy. Because your license has expired, you are not required to respond to the Notice of Violation at this time unless you contest the violation. Should you contest the Notice of Violation, a response is required within 30 days of the date of this letter addressing the specific basis for disputing the violation. This response should be sent to the Regional Administrator, NRC Region II, Suite 23T85, Sam Nun Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303-8931 and marked, "Open by Addressee Only - Response to a Notice of Violation; IA-09-032."

The purpose of this letter is to make clear to you the consequences of your violation of NRC requirements governing fitness-for-duty as a licensed operator, in accordance with 10 CFR Part 55. If you reapply for an operating license, you will need to satisfy not only the requirements of 10 CFR 55.31, but also those of 10 CFR 2.201, by addressing the reasons for the violation and the actions you have taken to prevent recurrence in order to ensure your ability and willingness to carry out the special trust and confidence placed in you as a licensed operator and to abide by all fitness-for-duty and other license requirements and conditions.

In accordance with Section 2.390 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

A copy of this letter without its enclosures and with your address removed will be made available to the Public unless you provide a sufficient basis to withdraw this violation within the 30 days specified above for a response to this Notice of Violation. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov>; select About NRC, How We Regulate, Oversight and then Enforcement. In addition, this letter will be maintained by the Office of Enforcement 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 the NRC Web site at <http://www.nrc.gov/readingrm/foia/privacy-systems.html>.

Should you have any questions concerning this action, please contact Mr. Malcolm Widmann of my staff. Mr. Widmann can be reached at either the address listed above or at 404-562-4550.

Sincerely,

/RA/

Kriss M. Kennedy, Director  
Division of Reactor Safety

Docket No. 55-20053  
License No. SOP-20291-5

cc: SCE&G

**CERTIFIED MAIL NO. 7007 2680 0002 0816 7419**  
**RETURN RECEIPT**

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Kriss M. Kennedy, Director  
Division of Reactor Safety

Docket No. 55-20053  
License No. SOP-20291-5

cc: SCE&G

**CERTIFIED MAIL NO. 7007 2680 0002 0816 7419**  
**RETURN RECEIPT**

PUBLICLY AVAILABLE       NON-PUBLICLY AVAILABLE       SENSITIVE       NON-SENSITIVE  
ADAMS:  Yes      ACCESSION NUMBER: \_\_\_\_\_       SUNSI REVIEW COMPLETE

OFFICE	RII:DRS	RII:EICS	RII:DRS				
SIGNATURE	/RA/	/RA/	/RA/				
NAME	MWidmann	CEvans	KKennedy				
DATE	05/12/2009	05/12/2009	05/13/2009	6/ /2009	6/ /2009	6/ /2009	6/ /2009
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

OFFICIAL RECORD COPY      DOCUMENT NAME: G:\DRS\IIOBI\ENFORCEMENT ACTIONS ASSOCIATED WITH  
OL\FFD\SUMMER\SUMMER FEB 2009 M\SUMMER FEB 2009 MITCHELL FFD.DOC