

December 1, 2009

IA-09-023

Mr. Duane Kuhn
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
(NRC Office of Investigations Report No. 1-2008-044)

Dear Mr. Kuhn:

The enclosed Confirmatory Order is being issued to you to confirm recent commitments made to the NRC. You made these commitments as part of a settlement agreement between yourself and the NRC concerning the results of an NRC investigation conducted by the NRC Office of Investigations (OI), Region I Field Office at Exelon Generation Company, LLC's (Exelon) Peach Bottom Atomic Power Station (Peach Bottom). The investigation was conducted to determine if you deliberately violated NRC requirements by failing to report to Exelon an arrest/criminal charges in accordance with Peach Bottom's security program procedures for Unescorted Access Authorization (UAA) and the Behavioral Observation Program (BOP).

In an NRC letter dated June 5, 2009 (ADAMS Accession Number ML091560199), the NRC provided you a factual summary of the OI report and informed you that the NRC was considering escalated enforcement action against you for an apparent violation. Specifically, the NRC determined, based on the OI investigation, that you deliberately failed to report an October 13, 2007 arrest for driving under the influence (DUI) of alcohol until April 29, 2008, approximately six months after the incident. This is contrary to the requirements in Exelon's BOP implementing procedure required by the Peach Bottom Physical Security Plan and 10 CFR 73.20(c), requiring that individuals with UAA who have had any arrests or criminal charges (including any incidents involving alcohol) report this on their first day back to work subsequent to the incident.

The June 5, 2009 NRC letter offered you the choice to discuss the apparent violations at a Predecisional Enforcement Conference or to request use of Alternate Dispute Resolution (ADR) with the NRC. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the action. At your request, on September 24, 2009, an ADR session was held in the Region I Office in King of Prussia, PA, between yourself and the NRC. Based on the discussions during the ADR sessions, a preliminary settlement agreement was reached regarding this matter. The elements of the preliminary agreement formulated and agreed to at the mediation session are contained within the enclosed Confirmatory Order.

As part of the settlement agreement, you agreed to take a corrective action to share your experience with others in the industry in an effort to prevent recurrence of this violation. In

recognition of this action, as well as the corrective actions you have already completed as the result of an Accelerated Rehabilitative Disposition program for your DUI arrest, the NRC agreed to not take additional enforcement action against you for this violation.

The enclosed Confirmatory Order (Effective Immediately) confirms the commitments made in the settlement agreement. In the signed "Consent and Hearing Waiver Form" (copy enclosed) dated November 17, 2009, you agreed to issuance of this letter and the Confirmatory Order. 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 Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at Office of the Regional Administrator, US NRC, 475 Allendale Rd., King of Prussia, PA 19406. If you have any questions or comments concerning this letter, please contact Mr. Karl Farrar of my staff at 610-337-5301. A copy of this letter and its enclosures will be 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>. The NRC will also include this letter, and its attached Confirmatory Order, on its website at www.nrc.gov; select, What We Do, Enforcement, Significant Enforcement Actions. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

If you have any questions or comments concerning this letter, please contact Mr. Karl Farrar of my staff at 610-337-5301.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Enclosures:

1. Consent and Hearing Waiver Form
2. Confirmatory Order

cc w/encl:

Commonwealth of Pennsylvania
State of Maryland

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/RA/

Samuel J. Collins
Regional Administrator

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1. Consent and Hearing Waiver Form
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cc w/encl:

Commonwealth of Pennsylvania
State of Maryland

SUNSI Review Complete: MMM (Reviewer's Initials)

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OFFICE	RI/ORA	RI/RA	HQ/NRR	HQ/OGC	HQ/OE	RI/RA
NAME	DHolody*	SCollins*	BBoger*	CBoote* (NLO)	GBowman*	SCollins
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*see previous concurrence page

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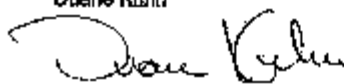
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Region I OE Files (with concurrences)

Enclosure 1

Consent and Hearing Waiver Form

Duane Kuhn hereby agrees with the attached Confirmatory Order. I recognize that by signing below, I consent to the issuance of the Confirmatory Order containing commitments agreed to as incorporated into the Confirmatory Order. The agreement was reached during the ADR mediation session held in the NRC Region I Office in King of Prussia, PA, on September 24, 2008. By agreeing to the attached Confirmatory Order, pursuant to 10 CFR 2.202(a)(3) and (d), I waive the right to request a hearing on all or any part of the Confirmatory Order.

Duane Kuhn



Date: 11-17-09

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

[7590-01-P]

In the Matter of) Docket No.: 55-62191
Duane Kuhn) License No: OP-11276-1
(Terminated)
) IA-09-023

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Duane Kuhn (Mr. Kuhn) was previously employed as a Reactor Operator (RO) at Exelon Generation Company, LLC's (Exelon or licensee) Peach Bottom Atomic Power Station (Peach Bottom or facility) located in Delta, Pennsylvania. Mr. Kuhn was the holder of RO License Number OP-11276-1, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 55. The license authorized Mr. Kuhn to manipulate the controls of the facility. At Exelon's request, the license was terminated on July 31, 2008.

This Confirmatory Order (Order) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on September 24, 2009. ADR is a process in which a neutral mediator with no decision-making authority assists parties in reaching an agreement on resolving any differences regarding the dispute.

II

The NRC Office of Investigations (OI) initiated an investigation on May 5, 2008 to determine whether Mr. Kuhn deliberately violated NRC requirements by failing to inform Exelon of

information required to be reported. Based on the evidence developed during the OI investigation, which was completed on March 4, 2009, the NRC identified an apparent willful violation. The apparent violation involved Mr. Kuhn's failure to inform Exelon of an arrest on his first day back at work following the incident, as required by Exelon's Behavioral Observation Program implementing procedure, the Peach Bottom Physical Security Plan, and 10 CFR 73.20(c). A description of this apparent violation and a factual summary of the results of the investigation were sent to Mr. Kuhn in an NRC letter dated June 5, 2009.

III

The June 5, 2009 NRC letter informed Mr. Kuhn that the agency was considering escalated enforcement against him for this apparent violation of NRC requirements and offered him the opportunity to either attend a Predecisional Enforcement Conference or to request use of ADR, to resolve this matter. On June 24, 2009, Mr. Kuhn requested the use of ADR and, on September 24, 2009, the NRC and Mr. Kuhn met in an ADR session mediated by a professional mediator, arranged through Cornell University's Scheinman Institute on Conflict Resolution. During that ADR session, a settlement agreement was reached. This Confirmatory Order is the result of that agreement, the elements of which consisted of the following:

1. As a result of the ADR discussion, the NRC and Mr. Kuhn agreed to the following facts:
(1) Mr. Kuhn was arrested on October 13, 2007, for driving under the influence (DUI) of alcohol; (2) Mr. Kuhn did not report the arrest to the Exelon-Peach Bottom management until April 29, 2008; and, (3) at the time of the arrest, Mr. Kuhn was required to follow all station procedures under the terms and conditions of his individual reactor operator license.

2. As a result of the facts agreed to in Item 1, the NRC has determined that Mr. Kuhn violated NRC requirements while he was employed as an RO at Peach Bottom. Specifically, the NRC concluded that, contrary to his reactor operator license, NRC regulations, and Exelon's Behavioral Observation Program procedure, Mr. Kuhn willfully failed to report to Exelon-Peach Bottom, for approximately six months, that he had been arrested for driving under the influence of alcohol on October 13, 2007. The NRC considered that this constituted a Severity Level III violation.

3. Mr. Kuhn agreed that he violated Peach Bottom's Physical Security Plan and Exelon's Behavioral Observation Program procedure when he failed to report the arrest (an incident involving alcohol, which, by Exelon procedure required reporting) for approximately six months, and, as a result, violated his individual reactor operator license. Mr. Kuhn contends that his actions were not willful because he did not consider the incident to constitute an arrest until reading the Peach Bottom newsletter article that included a definition of an arrest. Mr. Kuhn maintains that, immediately upon reading the article, he self-reported this incident to Exelon-Peach Bottom management. However, Mr. Kuhn acknowledged that he should have known that he was required to report this incident, because it involved alcohol.

4. Mr. Kuhn noted that he was required to complete a number of actions as a result of an Accelerated Rehabilitative Disposition program for his DUI arrest. These actions included:
 - a. Relinquishing his driver's license for a period of 60 days;
 - b. Completing 35 hours of community service;
 - c. Completing 16 hours of educational classes on the hazards of drinking and specifically the hazards of drinking and driving;

- d. Attending a victim impact panel, at which victims and families of victims of alcohol-related driving incidents, described how their lives have been impacted by such events; and
 - e. Completing 6 weeks of licensee-sponsored counseling, which included attending six sessions of Alcoholics Anonymous meetings.

- 5. During the ADR mediation session, Mr. Kuhn recognized an opportunity for other licensed operators at Peach Bottom, within Exelon, and in the industry to learn from his violation. Therefore, Mr. Kuhn agreed to author an article in which he relates this incident and what he has learned from it. Within that article, Mr. Kuhn will emphasize the importance of adherence to all requirements, including the requirement of informing facility licensees of all reportable incidents defined within the facility's behavior observation program. Mr. Kuhn also agreed to submit this article to: 1) Exelon for consideration to use in its training program; and 2) the Professional Reactor Operator Society (PROS) and the Institute of Nuclear Power Operations (INPO) requesting their consideration for publication in their respective newsletters.

- 6. Mr. Kuhn agreed to complete the actions in Item 5 within 90 days after issuance of a NRC Confirmatory Order confirming the commitments agreed to herein; send a letter to the NRC informing the NRC that these actions are complete; and include in the letter to the NRC a copy of the article submitted to Exelon, PROS, and INPO. Mr. Kuhn agreed to send this letter to the NRC within 30 days of completion of the actions stated in Item 5.

- 7. In light of the actions Mr. Kuhn has committed to take as described in Item 5, the NRC agreed to not take enforcement action against him, other than issuance of a Confirmatory Order confirming the commitments set forth herein. The Confirmatory

Order and its transmittal letter will be publically available in ADAMS, will appear on the NRC "Significant Enforcement Actions - Individuals" website for a period of one year, and will also be placed in Mr. Kuhn's individual license file.

On November 17, 2009, Mr. Kuhn consented to issuing this Order with the commitments, as described in Section V below. Mr. Kuhn further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

IV

Since Mr. Kuhn has agreed to take additional actions to address NRC concerns, as set forth in Section III, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that Mr. Kuhn's commitments, as set forth in Section III, 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 also determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Mr. Kuhn's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. §2.202 and 10 C.F.R. Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY THAT DUANE KUHN SHALL:

- A. Author an article in which he relates this incident and what he has learned from it, emphasizing the importance of adherence to all requirements, including the requirement of informing facility licensees of all reportable incidents defined within the facility's behavior observation program.

- B. Submit this article to: 1) Exelon for consideration to use in its training program; and 2) the Professional Reactor Operator Society (PROS) and the Institute of Nuclear Power Operations (INPO) requesting their consideration for publication in their respective newsletters.

- C. Complete the above actions within 90 days after issuance of this NRC Confirmatory Order.

- D. Send a letter to the NRC informing the NRC that these actions are complete; and include in the letter to the NRC a copy of the article submitted to Exelon, PROS, and INPO within 30 days of completion of the above actions.

The NRC Region I Regional Administrator may relax or rescind, in writing, any of the above conditions upon demonstration by Mr. Kuhn of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Kuhn, may request a hearing within 20 days of its publication in the *Federal Register*. 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 directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory

Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 Fed. Reg. 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be

submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the “Contact Us” link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If 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 C.F.R. 2.309(d) and (f).

If the 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.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, this Order shall be final 20 days from the date of its publication in the *Federal Register* without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

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

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins

Regional Administrator

Dated this the 1st day of December 2009