



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
245 PEACHTREE CENTER AVENUE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

June 2, 2010

IA-09-076

Mr. Dusty Bolman
[NOTE: HOME ADDRESS
DELETED UNDER 10 CFR 2.390]

SUBJECT: NOTICE OF VIOLATION (NUCLEAR REGULATORY COMMISSION OFFICE
OF INVESTIGATIONS REPORT NO. 2-2009-009, MCGUIRE NUCLEAR
STATION)

Dear Mr. Bolman:

This refers to the investigation initiated on November 26, 2008, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) at Duke Energy Carolinas LLC's (Duke Energy) McGuire Nuclear Station. The purpose of the investigation was to review the circumstances surrounding your involvement in a fitness-for-duty (FFD) matter that occurred at the McGuire Nuclear Station on October 20, 2008. A factual summary describing the results of the OI investigation, including the identification of an apparent violation of Section 50.5, "Deliberate misconduct", of Title 10 of the *Code of Federal Regulations* (10 CFR), was forwarded to you in our letter dated January 27, 2010.

The cover letter transmitting the factual summary provided you the opportunity to address the apparent violation by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. Our letter of January 27th also stated that if an adequate response is not received within 30 days of the date of the letter or an extension of time has not been granted by the NRC, the NRC would proceed with its enforcement decision. Although you indicated in separate telephone calls with the NRC's Region II office that you would be providing a written response within 30 days of receipt of our January 27th letter, we have not received any written response from you. As such, the Agency has reached an enforcement decision in this matter.

Based on the information developed during the investigation, the NRC has determined that a violation of 10 CFR 50.5(a)(1), "Deliberate misconduct", occurred. The NRC prohibits deliberate misconduct in accordance with 10 CFR 50.5(a)(1), which states, in part, that employees of NRC licensees may not engage in deliberate misconduct that causes the licensee to be in violation of any rule, regulation or order, or any term or condition of any license issued by the NRC. The violation is cited in the enclosed Notice of Violation (Notice) (Enclosure 1). On or about October 20, 2008, while performing contract welding activities at the McGuire Nuclear Station, you smelled what you believed to be marijuana. You questioned individuals working near you regarding the smell, and subsequently identified the individual you believed to be the apparent source. Although you were aware at the time that Duke Energy Nuclear Policy Manual

NSD 218.10.1, Revision 9, required that activities involving contraband or unusual behavior be reported to your supervision or the Manager, Access Services, you deliberately failed to report the incident. As such, your actions caused an NRC licensee, Duke Energy's McGuire Nuclear Station, to be in violation of its Nuclear Policy Manual NSD 218.10.1. Duke Energy's Nuclear Policy Manual, in part, implements the requirements of 10 CFR Part 26, which requires licensees to provide reasonable measures for the early detection of individuals who are not fit to perform activities at nuclear facilities.

Your deliberate failure to report an incident involving the suspected use of an illegal drug, inside the Protected Area of the McGuire Nuclear Station, is a significant matter. The NRC considers the implementation of a continual behavior observation program to be a vital piece of an effective fitness-for-duty program. Your deliberate failure to adhere to a Duke Energy procedure delayed the initiation of Duke's investigation into the matter, and is also an indication of your lack of willingness to comply with licensee procedures and regulatory requirements. As discussed above, your deliberate actions also placed the McGuire Nuclear Station in violation of regulatory requirements. Enclosure 2 includes a copy of the Confirmatory Order (Effective Immediately) issued to Duke Energy. Given the significance of this issue and the deliberate nature of your actions, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or criminal action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you should provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

However, instead of providing a response to this letter, you may request alternative dispute resolution (ADR) with the NRC under its Office of Enforcement's ADR Program in an attempt to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflict using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is an informal process in which a neutral third party (i.e. the mediator) works with you and the NRC to help the parties reach a resolution. The mediator, who the parties mutually select, does not have any decision-making authority or any stake in the outcome of the mediation. The NRC has contracted with the Cornell University's Institute on Conflict Resolution to facilitate the NRC's program as an intake neutral and as a source of mediators. Please contact Cornell University at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through mediation. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from

Mr. Dusty Bolman

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the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>). 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/reading-rm/foia/privacy-systems.html>.

Please feel free to contact Mr. Kriss Kennedy, Director, Division of Reactor Safety, at 404-997-4600, should you have any questions.

Sincerely,

/RA/

Luis A. Reyes
Regional Administrator

Enclosures:

1. Notice of Violation
2. Confirmatory Order to McGuire Nuclear Station

CERTIFIED MAIL 7006 2760 0000 8494 0775
RETURN RECEIPT REQUESTED

Distribution w/encls:

- R. Borchardt, OEDO
- E. Leeds, NRR
- S. Bailey, NRR
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- Enforcement Coordinators, RI, RIII, RIV
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- R. Trojanowski, RII
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X PUBLICLY AVAILABLE NON-PUBLICLY AVAILABLE SENSITIVE NON-SENSITIVE
 ADAMS: Yes ACCESSION NUMBER: _____

OFFICE	RII:ORA	RII:DRS	RII:DRS	RII:ORA	
SIGNATURE	/RA/	/RA By HChristensen for/	/RA By HChristensen for/	/RA/	
NAME	CEVANS	KKENNEDY	JLUBINSKI	VMCCREE	
DATE	4/26/10	4/21/10	4/21/10	6/1/10	
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO
OFFICE	OGC	NSIR	OE		
SIGNATURE	/RA By e-mail/	/RA By e-mail/	/RA By e-mail/		
NAME	Cgallard	GWest	GBulla		
DATE	5/5/10	5/3/10	5/6/10		
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YESNO

OFFICIAL RECORD COPY DOCUMENT NAME

NOTICE OF VIOLATION

Mr. Dusty Bolman
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

IA-09-076

During an investigation completed by the NRC on September 3, 2009, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 50.5(a)(1), states, in part, that any employee of a licensee or contractor who knowingly provides to any licensee or contractor, other goods or services that relate to a licensee's activities in this part, may not engage in deliberate misconduct that causes or would have caused, if not detected, 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.

10 CFR 26.10, states in part, that a licensee's FFD program must provide reasonable measures for the early detection of individuals who are not fit to perform activities within the scope of 10 CFR Part 26. Section 26.20 states, in relevant 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. Section 26.23(a) states, in part, that contractor personnel performing activities within the scope of this part for a licensee must be subject to the licensee's program relating to fitness-for-duty.

The Duke Energy Nuclear Policy Manual, NSD 218.10.1, Revision 9, states in relevant part, that where unusual behavior, lack of trustworthiness and reliability, or evidence that an individual is not fit for duty is observed, it shall be reported to the manager of Access Services.

Contrary to the above, on approximately October 20, 2008, Mr. Dusty Bolman, a contract welder, engaged in deliberate misconduct that caused an NRC licensee, Duke Energy's McGuire Nuclear Station, to be in violation of a regulation. Specifically, Mr. Bolman became aware of the potential use of marijuana inside of the Protected Area at the McGuire Nuclear Station, but deliberately failed to immediately report the event as required by McGuire Nuclear Station's Duke Energy Nuclear Policy Manual, NSD 218.10.1.

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

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region II, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; IA-09-076" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified

in this Notice, an order or a Demand for Information may be issued. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response 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> to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 2nd day of June 2010