



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 12, 2019

IA-19-027

Mr. Thomas B. Saunders,  
[Note: Home Address Deleted  
Under 10 CFR 2.390]

SUBJECT: APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENTS  
(OFFICE OF INVESTIGATIONS REPORT NO. 2-2017-032)

Dear Mr. Saunders:

This letter refers to an investigation completed on November 20, 2018 by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) related to Southern Nuclear Operating Company (SNC), Vogtle Electric Generating Plant (Vogtle), Units 3 and 4, currently under construction. The purpose of the NRC OI investigation was to determine whether a mechanical planner at Vogtle was the subject of employment discrimination in violation of the NRC's "Employee Protection" regulation, specifically, 10 CFR 52.5 for the purposes of this case. The individual was first employed by Black Diamond Services, a contractor for Chicago Bridge and Iron. During this first period of employment, which spanned part of 2014 and 2015, the employee raised numerous safety-related welding and module fit-up concerns. The individual returned to Vogtle on July 11, 2017. However, the NRC determined that he was escorted offsite on July 13, 2017, and his employment was terminated the following day, on July 14, 2017, in part for engaging in a protected activity.

The NRC staff reviewed the evidence gathered during the NRC OI investigation and determined that your actions resulted in an apparent violation of the NRC's rule prohibiting deliberate misconduct, 10 CFR 52.4(c)(1). This rule prohibits an employee or contractor of an NRC licensee, applicant for a license, a standard design certification, or a standard design approval from engaging in deliberate misconduct that causes an NRC licensee to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission, any standard design approval, or standard design certification. Based on the evidence developed during the investigation and subsequent staff analysis, it appears that you, as the then SNC Contracts and Procurement Director for Construction at Vogtle, engaged in deliberate misconduct that caused an NRC licensee (SNC), to be in violation of 10 CFR 52.5, "Employee Protection." This apparent violation is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy can be found on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

The apparent violation, which is based on the NRC's OI investigation, was discussed with you during a June 12, 2019 telephone conversation.

Since the NRC has not made a final determination in this matter, no Notice of Violation is being issued at this time. In addition, please be advised that the characterization of the apparent violation, and the number of violations, may change as a result of further NRC review.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) request to participate in a closed predecisional enforcement conference (PEC), or (2) request to participate in an alternative dispute resolution (ADR) session. These options are discussed in the paragraphs that follow. Please contact John Harrison at 301-287-9452 or email [john.harrison@nrc.gov](mailto:john.harrison@nrc.gov) within 10 days of the date of this letter to notify the NRC of your intended response.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. This may include information to determine whether a violation occurred, information to determinate the significance of the violation, information related to the identification of the violation, and information related to any corrective actions taken or planned. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. If a PEC is held, it will be transcribed, and the PEC will be closed to public observation since information related to an (OI) report will be discussed and the report has not been made public. A PEC should be held within 30 days of the date of this letter.

The NRC's Enforcement Policy permits the individual who was the subject of the alleged employment discrimination to participate in the conference. Accordingly, that individual would be invited to attend the PEC and may participate by observing the conference. Following your presentation, the individual may, if desired, present their views on why they believe the discrimination occurred and comment on your presentation. You would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances would the NRC staff permit you or the employee to cross-examine or question each other.

In lieu of a PEC, you may request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a third party neutral. The ADR process that the NRC has decided to employ is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties (you and the NRC) agree to use ADR, they select a mutually agreeable

neutral mediator and share equally the cost of the mediator's services. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Scheinman's Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. An ADR mediation session should be held within 45 days of the date of this letter.

Enclosed is the redacted Report of Investigation (ROI) 2-2017-032. Based on review and analysis of the evidence, NRC staff determined that there is a preponderance of evidence sufficient to conclude that SNC appears to have discriminated against the mechanical planner, in part, because he engaged in protected activities. The NRC has not made a final decision regarding the apparent violation; therefore, the NRC will not make the ROI available to the general public at this time, and we request that you also refrain from doing so. If a PEC is held, the other PEC participants, including the individual subject to the alleged discrimination, will be sent a copy of the redacted ROI.

A copy of this letter and its enclosures will not be made publicly available at this time. However, if the NRC subsequently issues an enforcement action to you, in accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, 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>. 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>.

Sincerely,

*/RA/*

George A. Wilson, Director  
Office of Enforcement  
Nuclear Regulatory Commission

Enclosures:

1. Apparent Violation
2. Report of the Office of Investigation No. 2-2017-032  
(EXEMPT FROM PUBLIC DISCLOSURE)
3. NUREG/BR-0317 Enforcement ADR Program

SUBJECT: APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENTS  
(OFFICE OF INVESTIGATIONS REPORT NO. 2-2017-032) Dated: 6/12/2019

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<b>OFFICE</b>	OE:CRB	OE:CRB: BC	OE:D
<b>NAME</b>	JHarrison	DSolorio	GWilson
<b>DATE</b>	06/06/2019	06/06/2019	06/12/2019

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## Apparent Violation

10 CFR 52.4 provides, in relevant part, that any employee of a licensee; applicant for a license, a standard design certification, or a standard design approval; or any contractor, may not (1) engage in deliberate misconduct that causes a licensee or holder of a standard design approval to be in violation of any regulation of the Commission.

10 CFR 52.4(b)(i) states, in relevant part, that deliberate misconduct means an intentional act or omission that a person knows would cause a licensee or an applicant for a license, standard design certification, or standard design approval to be in violation of any rule, regulation, or order; or any term, condition or limitation, of any license, standard design certification, or standard design approval.

10 CFR 52.5(a), states that "Discrimination by a Commission licensee, holder of a standard design approval, an applicant for a license, standard design certification, or standard design approval, or a contractor or subcontractor of a Commission licensee, holder of a standard design approval, an applicant for a license, standard design certification, or standard design approval against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act."

10 CFR 52.5(a)(1)(i), states, in part, that the protected activities include but are not limited to providing the Commission or his or her employer information about alleged violations of either of the statutes named in the introductory text of paragraph (a) of this section or possible violations of requirements imposed under either of those statutes.

Contrary to the above, on July 13, 2017, the SNC Contracts and Procurement Director for Construction at Vogtle engaged in deliberate misconduct that caused SNC to be in apparent violation of an NRC regulation. Specifically, on July 13, 2017, the SNC Contracts and Procurement Director for Construction had an SNC official remove a mechanical planner from the site, knowing that his actions were in violation of 10 CFR 52.5, "Employee protection." At the time he had the mechanical planner removed, the SNC Contracts and Procurement Director for Construction knew that the mechanical planner had engaged in protected activity by raising numerous safety-related welding and module fit-up concerns. The mechanical planner was terminated from employment on July 14, 2017.