



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

November 20, 2019

IA-18-045

Mr. Mark Rauckhorst
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: NOTICE OF VIOLATION, NRC INSPECTION REPORT (OFFICE OF
INVESTIGATIONS REPORT NO. 2-2017-004)

Dear Mr. Rauckhorst:

This letter refers to the investigation completed on February 13, 2018 by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) regarding your activities at 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 contract employee, employed initially by Shaw, and later Chicago Bridge and Iron (CB&I) and Westinghouse, was the subject of employment discrimination in violation of the NRC's "Employee Protection" regulation, specifically, Title 10 of the *Code of Federal Regulations* (10 CFR) 52.5 for the purposes of this case.

In a letter dated May 15, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19126A069), the NRC notified you of an apparent violation of 10 CFR 52.4, "Deliberate Misconduct." Based on the evidence developed during the investigation and subsequent staff analysis, it appeared that you engaged in deliberate misconduct that caused an NRC licensee (SNC), to be in violation of 10 CFR 52.5, "Employee Protection." Specifically, on December 22, 2015, you sent a letter to Westinghouse to remove 14 listed individuals, including a contract employee to SNC, from the site. The contract employee was subsequently terminated from employment in 2016, which the NRC determined was in part because he engaged in protected activity. To address this apparent violation, the NRC provided you an opportunity to either participate in: (1) a closed predecisional enforcement conference (PEC), or (2) an alternative dispute resolution (ADR) session. You chose to participate in ADR.

On August 14, 2019, the NRC held an ADR at the NRC Headquarters office in Rockville, Maryland, with you and your attorney, to discuss the apparent violation. Because the parties could not reach agreement on an appropriate resolution at the ADR, you elected to participate in a PEC. On September 19, 2019, a PEC was held at the NRC Headquarters office in Rockville Maryland, with you and your attorney.

Based on the information developed during the investigation and the information that you provided at your PEC, the NRC has determined that a deliberate violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Enclosure). Your deliberate actions caused SNC, the licensee, to be in violation of NRC requirements for employee protection, and you to be in violation of 10 CFR 52.4(c)(1), "Deliberate Misconduct." In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in NRC-licensed activities for a period of time as a result

of your actions. However, after considering the circumstances of this case, including the information you provided during the PEC, I have decided to issue the enclosed Notice of Violation.

Given the significance of the underlying 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 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 may 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.

Instead of providing a response to the Notice, you may request ADR with the NRC in an attempt to resolve this issue. This request must be made within 30 days of the issuance date of the Notice. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is 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>. The Institute on Conflict Resolution at Cornell University has agreed to facilitate NRC's program as an intake neutral.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), 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 Agencywide Documents Access and Management System (ADAMS), accessible from 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. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. 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 Catherine Thompson of my staff at 301-287-9515 if you have any questions.

Sincerely,

/RA/

George A. Wilson, Director
Office of Enforcement

Enclosure:

1. Notice of Violation

SUBJECT: NOTICE OF VIOLATION, NRC INSPECTION REPORT (OFFICE OF INVESTIGATIONS REPORT NO. 2-2017-004) DATE: November 20, 2019

DISTRIBUTION:

- P. Moulding, OGC
- L. Bear, OGC
- M. Kowal, RII
- B. Hughes, NRR
- S. Sparks, RII
- OE r/f

Publicly Available

Cover Letter & NOV: ML19301C710

Closeout Letter: ML19301C773

ADAMS Package: ML19301C328

OFFICE	OE/CRB	OE/CRB	OGC	OE/D
NAME	CThompson	DSolorio	PMoulding	GWilson
DATE	11/12/2019	11/12/2019	11/19/2019	11/20/2019

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Mr. Mark Rauckhorst
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

IA-18-045

During an NRC investigation completed on February 13, 2018, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the *Code of Federal Regulations* (10 CFR) 52.4(c)(1), provides, in relevant part, that any employee of a licensee . . . may not 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) defines "deliberate misconduct" as "an intentional act or omission that a person or entity knows...[w]ould cause a licensee...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), provides, in relevant part, that discrimination by a Commission licensee . . . 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.

Contrary to the above, on December 22, 2015, you engaged in deliberate misconduct that caused Southern Nuclear Operating Company (SNC), an NRC licensee, to be in violation of 10CFR52.5(a). Specifically, you sent a letter to Westinghouse directing removal of 14 listed individuals, including a contract employee to Southern Nuclear Operating Company (SNC), from the site. The contract employee was included on your list and subsequently terminated from employment, in part, because he engaged in protected activity by raising concerns regarding design and code compliance issues in 2013 and 2014.

This is a Severity Level III violation (Section 6.10).

Pursuant to the provisions of 10 CFR 2.201, Mr. Mark Rauckhorst is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738 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-18-045" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation; (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. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued requiring information as to why such other action as may be proper should not be taken. 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.

Enclosure

Your response will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Document Access and Management System (ADAMS), accessible from 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. 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. This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. 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> .

Dated this 20th day of November 2019