

August 17, 1992

MEMORANDUM FOR: Stewart D. Ebnetter, Regional Administrator
Region II

FROM: James Y. Vorse, Field Office Director
Office of Investigations, Region II

SUBJECT: REQUEST FOR INVESTIGATION
NO. RII-91-10

Subject request for investigation, dated November 21, 1991, was based upon an allegation from D. HUYCT, Security Manager of Georgia Power Company's (GPC) Vogtle Electric Generating Plant (VEGP), that former GPC employee Allen MOSBAUGH was currently in possession of VEGP safeguards material (Enclosed). This material was identified as audio tape recording #44 (as identified by NRC). Subsequently, GPC identified another tape in the possession of MOSBAUGH, #153, as also containing safeguards information.

The facts already developed in this matter are as follows:

1. On September 11, 1990, while being deposed during a Department of Labor (DOL) hearing, MOSBAUGH revealed to GPC that he was in possession of numerous audio tape recordings which he surreptitiously recorded while employed at VEGP.
2. On September 13, 1990, MOSBAUGH's DOL attorney notified NRC of the existence of the tapes and that these tapes contained conversations pertinent to allegations previously presented to NRC by MOSBAUGH. Concurrently, GPC advised NRC Region II (RII) and the NRC Resident Inspector at VEGP of the existence of these tapes. The DOL Administrative Law Judge (ALJ) ordered these tapes to be produced to GPC as part of the discovery process in the DOL matter.
3. Also on September 13, 1990, NRC intervened in the DOL matter, and the DOL ALJ ordered the tapes to be produced to NRC. On the same day, the Office of Investigations (OI) NRC received 277 tapes as evidence from MOSBAUGH. Two full sets of duplicates of these tapes were produced by OI by October 10, 1990. One set was delivered to NRC RII staff, and the other to NRR. The NRC was put on notice, in September 1990, by C. K. McCOY, Vice President, Vogtle Project, GPC, that these tapes may contain safeguards material. MOSBAUGH told OI that he did not think any of these tapes contained safeguards material.

4. On September 15, 1990, GPC placed MOSBAUGH on administrative leave for conducting this taping. On October 11, 1990, MOSBAUGH's employment with GPC was terminated by GPC.
5. Of the 277 tapes he provided to NRC, MOSBAUGH identified 76 that potentially contained the most significant conversations that pertained to the ongoing OI investigations of MOSBAUGH's allegations. Initially, transcripts of 13 of these 76 were produced and reviewed by both OI, for evidence of wrongdoing, and NRC staff, for safeguards material and health and safety issues.
6. In January 1991, a prioritized schedule for staff review of all 277 tapes for safeguards and health and safety issues was prepared. Transcripts of the remainder of the 76 higher priority tapes as identified by MOSBAUGH were prepared, and OI continued its review for wrongdoing and identification of speakers on these 76 tape transcripts. OI's data base of these 76 tapes was completed by August 1991. The NRC staff review of the remainder of the 76 tapes was completed in July 1992. The remaining 201 of the original 277 tapes were not reviewed by OI for wrongdoing, or by the staff for safeguards.
7. The original tape recordings of the 76 high priority tapes have been retained as evidence by OI. However, on February 14, 1991, at the direction of NRC Office of General Counsel and staff, the unreviewed 201 original tapes were attempted to be returned to MOSBAUGH. MOSBAUGH refused to accept these tapes without an NRC assurance that they did not contain safeguards material. Since this assurance could not be made, NRC retained possession of the 201 tapes.
8. On February 21, 1991, with no NRC safeguards review, these 201 tapes were returned to MOSBAUGH. At his DOL hearing in March 1992, MOSBAUGH testified that NRC had assured him that the tapes did not contain safeguards. OI NRC did not give any such assurance to MOSBAUGH.
9. MOSBAUGH, through correspondence to NRC from his DOL attorney, has again denied that the tapes alleged by HUYCT, supra, or any other tapes MOSBAUGH recorded while employed by GPC, contain safeguards material.
10. On November 14, 1991, GPC notified the NRC that tape #44, which was released to them by the attorneys representing GPC, contained safeguards information. They subsequently informed the NRC that Tape #153 may also contain safeguards material. On November 21, 1991, the NRC Regional Administrator, RII, requested that OI initiate an

investigation to determine if MOSBAUGH knew that he was recording safeguards information and was in unauthorized possession of safeguards material.

11. Tapes #44 and #153 were reviewed by NRC Safeguards personnel from NRC RII and NRR who concluded that the tapes contained safeguards material. This review was forwarded to OGC for legal analysis. OGC concluded that although not all of the material identified by RII and NRR as safeguards materials was, in fact, safeguards material, both tapes did contain some safeguards information. The OGC analysis listed a number of potential NRC violations. However, OGC indicated that whether or not a violation occurred would depend on the information developed during an OI investigation.

Stewart D. Ebnetter

4

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08/17/92