

KOHN, KOHN & COLAPINTO, P.C.
Attorneys At Law
517 FLORIDA AVENUE, NW
WASHINGTON, DC 20001-1850
(202) 234-4663 • FAX (202) 462-4145

Direct Dial: (202) 234-1198

June 1, 1995

Russell Powell, Director
Division of Freedom of Information
and Publication Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Re: FOIA-95-211
and PA-5-5

Dear Mr. Powell:

Pursuant to 10 C.F.R. 9.41, we hereby submit on behalf of Allen L. Mosbaugh additional information regarding a request for a waiver of fees with respect to FOIA 95-211. Mr. Mosbaugh is working in conjunction with The National Whistleblower Center (NWC), a tax-exempt, non-profit organization that assists whistleblowers to report allegations of corporate and government wrongdoing. In a letter dated May 2, 1995, the following was requested:

- A) Under the privacy act of 1974, 5 U.S.C. 552a, Mr. Mosbaugh hereby requests that portions of certain documents maintained by the U.S. Regulatory Commission (NRC) which contain information incorrect, inaccurate, irrelevant, untimely, incomplete, and otherwise improper information, be amended.
- B) Mr. Mosbaugh hereby requests access to the following information under both the FOIA and PA:
 - 1) Access to information relied upon by the NRC, directly or indirectly, related in any manner to the three documents listed [in Part A] above for which Mr. Mosbaugh requests a correction;
 - 2) All documents related, directly or indirectly, to any enforcement action taken against Georgia Power Company by the NRC from September 1, 1990 through present, which have not been previously released to either Mr. Mosbaugh and/or the NWC.

Mr. Mosbaugh is willing to limit part (B) of his May 2, 1995 FOIA request to enforcement actions pertaining to Plant Vogtle as you suggested in your May 17, 1995 response.

As your requested, the eight factors stated in 10 C.F.R. 9.41(b) are addressed as follows:

- (1) **Describe the purpose for which the requester intends to use the requested information.**

The purpose for which Mr. Mosbaugh requests the above information is to bring allegations of corporate and/or government wrongdoing to the attention of the public. In particular, the public has an interest in knowing whether Mr. Mosbaugh, as a NRC allegor, was responsible for any of the violations committed by Georgia Power company, as the NRC staff has alleged in the modified Notice of Violation, or whether the NRC staff has committed misconduct or negligence in blaming Mr. Mosbaugh, in part, for Georgia Power's violations. It is essential that the public becomes aware of such actions when their health and safety, as well as their energy resources are compromised and jeopardized. The violations committed by Georgia Power Company while running their nuclear power plant at Vogtle must be brought to the public's attention so that all violations will be corrected, and future violations be prevented from reoccurring. Additionally, oversight of NRC actions, specifically blaming Mr. Mosbaugh for contributing to Georgia Power's violations, which are arbitrary and capricious is in the public interest.

- (2) **Explain the extent to which the requester will extract and analyze the substantive content of the agency record.**

Mr. Mosbaugh does not know the contents of the documents which the NRC has identified as responsive to his request and he is therefore unable to fully respond. Nonetheless, in general he will be working in conjunction with the NWC which has the valuable resource of several attorneys experienced in the area of whistleblower protection law and NRC regulations protecting the public health and safety who will assist him in reviewing all documents released under FOIA. Those documents which substantiate safety allegations about Plant Vogtle, allegations of wrongdoing by Georgia Power Company and/or the NRC or substantiate that his tapes contained no safeguards material will be evaluated by attorneys for use in NRC proceedings concerning Plant Vogtle and protection of the public safety, for supplementing NRC reports or findings and for release to the news media, Congress, other public interest groups and general public. The substantive content of the documents related to these allegations will also be analyzed for the preparation of press releases, articles and other types of publication. In particular, a review of the material that was relied upon by the NRC staff in reaching its conclusion that Mr. Mosbaugh was somehow to blame for Georgia Power Company's violations of NRC regulations and Georgia Power Company's misconduct will shed light on the competence of the NRC staff in performing its job and inform the public as to who is right about the culpability of potential wrongdoers at Georgia Power Company.

The substantive content much of which is technical in nature will be analyzed by engineers or others with the technical expertise to evaluate the action taken by Georgia Power Company and/or the NRC in response to the safety allegations. When appropriate, written evaluations will be prepared to support further allegations of safety violations by whistleblowers or to formally respond or supplement the disposition of the technical items findings by the NRC staff. These written evaluations will also be disseminated to the news media, Congress, the Georgia Public Service Commission and other public interest groups.

- (3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding.

For the "specific activity or research in which the agency records will be used" please see our responses to numbers (1) and (2), above.

As the courts have already noted, supplementing official government findings by one who has demonstrated expertise and effectiveness with regard to the particular subject area will satisfy the "contribute to public understanding" factor. See, Project on Military Procurement v. Dept. of Navy, 710 F. Supp. 362 (D.D.C. 1989). The review of the NRC's investigations into Allen L. Mosbaugh's allegations concerning Plant Vogtle will shed more light on and contribute to public understanding of the issue and the NRC's bases for its findings.

Mr. Mosbaugh is able to analyze the technical data that relates to the subject matter at issue. In addition, he is also able to review information concerning the safety allegations that he has raised. This is due largely in part to his experience at Georgia Power Company. Mr. Mosbaugh was employed at the Vogtle Plant from August 1984 through October 1990. During this employment he held several positions starting as Superintendent of Engineering Liaison, Superintendent of Engineering Services, Assistant Plant Support Manager and he held the position of Acting Assistant General Manager Plant Support at Plant Vogtle from January 1989 until May 1990. In this position Mr. Mosbaugh supervised the managers and the departments of engineering Support, Quality Control, Security, Administration, Technical Support and Training, comprising a total of 400 personnel reporting to him.

Mr. Mosbaugh's attorneys are experts in the area of whistleblowing, in general, and of NRC allegations, in particular. They have represented numerous nuclear industry whistleblowers before the U.S. Department of Labor and the NRC. They have testified and/or represented witnesses before Congress in hearings related to oversight of NRC functions and provided written and oral

comments to NRC staff on several occasions on matters related to the NRC's whistleblower protection policies. See, e.g., S.Hrg. 101-90, Hearing Before the Subcommittee on Nuclear Regulation, Committee on Environment and Public Works, United States Hearing, "The Secret Settlement Agreements Restricting Testimony at Comanche Peak Nuclear Powerplant..." (May 4, 1989); Texas Utilities Electric Co. (Comanche Peak Steam Electric Station Units 1 and 2), CLI-88-12, 28 NRC 605 (1988); Texas Utilities Electric Co. (Comanche Peak Steam Electric Station Units 1 and 2), CLI-89-06, 28 NRC 348 (1989); Testimony of Allen Lee Mosbaugh and Comments of National Whistleblower Center, Before the U.S. Senate Committee on Environment and Public Works, Subcommittee on Clean Air and Nuclear Regulation, "A Hearing to Consider the NRC's Handling of Intimidation and Harassment Allegations By Employees within the Nuclear Industry," (July 15, 1993); Response to NRC Review Team, Proposal for Protecting Whistleblowers from Retaliation, David K. Colapinto and Stephen M. Kohn (January 31, 1994); Letter from David K. Colapinto to Secretary, NRC, re: 60 Fed. Reg. 7592, public comments on draft NRC policy statement (April 10, 1995); Mitchell v. Arizona Public Service Co., et al., DOL Case No. 91-ERA-9, slip op. of ALJ; Thomas v. Arizona Public Service Co., DOL Case No. 89-ERA-19, slip op. of ALJ and Secretary of Labor; In re: Arizona Public Service Company, DD-92-07, 36 NRC 338 (1992). Also see, Kohn, The Whistleblower Litigation Handbook, (PESI Legal Publishing, 1990); Kohn and Kohn, The Labor Lawyers Guide to the Rights and Responsibility of Employee Whistleblowers, (Quorum, 1988); and Kohn, Protecting Environmental and Nuclear Whistleblowers: A Litigation Manual, (NIRS, 1985).

Together, Mr. Mosbaugh and his attorneys desire to review the material relied upon by the NRC staff to form its published conclusion that Mr. Mosbaugh was in part to blame for Georgia Power's violations. Mr. Mosbaugh and his attorneys believe that after careful review of the facts contained in the requested records that he will be vindicated from any blame associated with Georgia Power's violations. Additionally, Mr. Mosbaugh and his attorneys believe that the requested records will shed light on the wilfulness of Georgia Power's misconduct.

- (4) Describe the likely impact on the public's understanding of the subject as compared to the level of the subject existing prior to disclosure.

To date, the public has not been fully informed about the extent of the NRC findings regarding the allegations of wrongdoing by Georgia Power Company at Plant Vogtle. Indeed, the NRC staff's modified findings blaming Mr. Mosbaugh came without public notice and without even interviewing Mr. Mosbaugh to obtain his explanation in response to Georgia Power's allegations against him. The NRC staff acted arbitrarily and capriciously in this matter in relying on Georgia Power's allegations that blamed Mr. Mosbaugh.

The information requested may have a profound impact upon the public's understanding of the NRC's curious conclusions with respect to Mr. Mosbaugh's involvement and the watered-down NRC staff conclusion that high-ranking licensee officials did not act wilfully when committing violations of NRC regulations, given the initial publicity which Mr. Mosbaugh's allegations have received in the past. Additionally, the information may be used to rebut allegations used by Georgia Power that Mr. Mosbaugh taped safeguarded information. The requested information would allow him to broaden the public's understanding of not only the allegations, but also the NRC's basis for its findings and the definition of safeguards.

Information which sheds light on the substantive allegations as well as the NRC's investigations will impact the public's concern for public health and safety regarding Plant Vogtle, in particular, and nuclear power plants, in general.

(5) Describe the size and nature of the public to whose understanding the contribution will be made.

The topics covered by the requested information have already received nationwide media attention. For example, Mr. Mosbaugh's whistleblower allegations against Georgia Power aired on NBC Nightly News in 1992. There is also regular press coverage in the Georgia media about matters concerning the operation and oversight of Plant Vogtle.

The public sector Mr. Mosbaugh intends to relate this information to, with the help of the NWC, includes but is not limited to 1) the citizens and residents of the State of Georgia, to whom there is a threat against public health and safety; 2) the citizens of the United States, to whom there is not only a threat against public health and safety, but also an interest as taxpayers that the government agency responsible for the oversight of the nuclear industry is fulfilling its duties; 3) the nuclear industry, its interest is self-evident, and 4) any individuals, whom have an interest in the issues contained in the information.

In addition, the NWC, with whom Mr. Mosbaugh intends to cooperate, has a public education project which alerts employees and organizations to issues concerning whistleblower protection and nuclear power and provides training materials and workshops regarding these issues and on how to work with and/or protect environmental whistleblowers. Through the assistance of the NWC, Mr. Mosbaugh plans to utilize direct mail informational bulletins to environmental, labor and other groups, workshops, public service announcements and telephone referrals/consultations to alert the public to these issues and the legal protection afforded employees under the law.

(6) **Describe the intended means of dissemination to the general public.**

Please see the answers to numbers (1) through (5), above. Generally, the intended means of dissemination will be through press releases, fact sheets on relevant laws, brochures, workshops, conferences, written reports and/or evaluations, submitting articles of letters to appropriate publications and by publishing articles in the NWC newsletter. Depending on the substantive content of the requested information some documents released pursuant to this request may be incorporated into future books or publications about Whistleblower protection and NRC regulations.

(7) **Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee.**

The courts have ruled that this factor is irrelevant to the inquiry of whether a fee waiver should be granted. See, National sec. Archive v. U.S. Dept. of Justice, 880 F.2d 1381, 1387-88 (D.C. Cir. 1989). Nonetheless, Mr. Mosbaugh does not intend to charge for information provided to the news media. If information is incorporated into books or other publications, the only charge will be for the publication as a whole such as a subscription fee or purchase price for the book. See, (6) above.

Additionally, Mr. Mosbaugh has provided hundreds of hours of free time to assist the NRC in its investigations in the past and Mr. Mosbaugh, his attorneys and the NWC have produced literally thousands of pages of information about his allegations to the media, Congress and the NRC in the past at no cost.

(8) **Describe any commercial or private interest the requester or any other party has in the agency records sought.**

There is no "commercial or private interest" at issue here. Public dissemination of information obtained from the government, even when it involves a sale for profit, should not be considered a "commercial use." 132 CONG. REC. H9463 (daily ed. Oct. 8, 1986). The Leahy and English-Kindness statements argue for a "broad interpretation" of the term "news media" to include, as Senator Leahy put it, "any person or organization which regularly publishes or disseminates information to the public, whether in print or electronically..." 132 CONG. REC. S14298 (daily ed. Sept. 30, 1986); 132 CONG. REC. H9463 (daily ed. Oct. 8, 1986). Mr. Mosbaugh's proposed dissemination of the information is consistent with the factors which favor the granting of fee waivers.

The purpose of requesting the information is to promote the public health and safety and to make the general public aware of the operation and oversight of Plant Vogtle as well as the allegations of wrongdoing Mr. Mosbaugh has made. Furthermore, the

information requested will contribute significantly to the public's understanding of the operations or activities of the government and/or is primarily in the public interest and is not in the commercial interest of the requester. The litigation of public rights is not a private matter and should not be treated as such.

A fee waiver should also be granted due to the fact that Mr. Mosbaugh has been extremely cooperative in assisting the government with its investigations of the Georgia Power's Vogtle Plant. Mr. Mosbaugh voluntarily participated in the lengthy investigation of the NRC's Office of Investigation, and also supplied them with copies of numerous tapes and documents at no cost to the NRC. Furthermore, he has spent hour after hour documenting the wrongdoings of Georgia Power, all at no cost to the government. Mr. Mosbaugh's allegations have resulted in significant NRC enforcement against Georgia Power, including \$ 200,000 in civil penalties.

In addition, the regulatory statutes that permit Mr. Mosbaugh to intervene in Plant Vogtle's licensing proceeding [see, In the Matter of Georgia Power Company et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3 and 50-425-OLA-3, re: License Amendment/Transfer to Southern Nuclear] do not provide reimbursement for costs and attorney's fees. At this time Mr. Mosbaugh is unemployed, due to the fact that he came forward with the truth against a major and powerful utility company and was subsequently fired for reporting violations to the NRC. Mr. Mosbaugh will never be able to recover what he has lost in the nuclear energy industry. He risked his career and reputation to uphold the environmental regulations outlined by the government and to do what he believed was right. In return he has received endless frustration from the NRC staff despite his cooperation with the NRC's investigations over a five year period. He has had to battle with Georgia Power in licensing proceedings because the NRC staff investigations have not adequately redressed the violations committed by Georgia Power Company.

To the extent that these records may have use in litigation it would be in proceedings (e.g. as the ongoing NRC licensing proceeding and other NRC investigatory proceedings) that involve "public" as opposed to "private" rights. See, Polizzi v. Gibbs & Hill, Inc., DOL Case No. 87-ERA-38, Sec. Ord. (July 18, 1989). The allegations at issue in the NRC licensing proceeding will not result in personal gain for Mr. Mosbaugh. Rather, the only issues at stake are in whether the safety of the public is at risk due to the alleged lack of character and competence of Georgia Power and Southern Nuclear Management Officials.

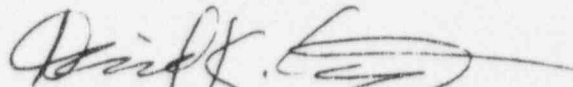
Even if Mr. Mosbaugh is able to recoup the damage to his reputation as a result of the NRC's modified findings blaming him for Georgia Power's violations that is still in the public interest.

Conclusion

For the foregoing reasons, a fee waiver should be granted regarding Allen L. Mosbaugh's request for the information concerning Plant Vogtle.

If you need further information, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

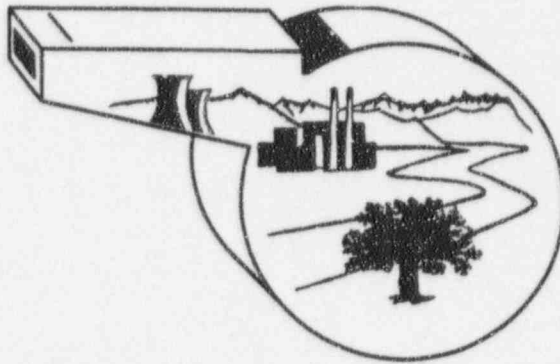


David K. Colapinto
Attorney for Mr. Mosbaugh
and the National
Whistleblower Center

Enclosures:

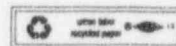
News Articles re: Mr. Mosbaugh's allegations
National Whistleblower Center Brochure
Whistleblower News, Vol. 1, No. 1 (Winter 1994)

National Whistleblower Center



**Protecting
the public,
employees and
the environment
through law and education**

**The National Whistleblower Center
415 Florida Avenue, NW
P.O. Box 26381
Washington, DC 20001-9996
(202)667-2075 • Fax (202)667-6124**



Established in 1988, The National Whistleblower Center is a nonprofit educational and advocacy organization committed to providing employee whistleblowers with legal representation.

Seven major federal environmental laws (Clean Air, Toxic Substances, Clean Water, Atomic Energy, Solid Waste, Safe Drinking Water and Superfund) have special provisions protecting employee whistleblowers. When applied skillfully, these laws are effective in protecting workers who risk their jobs and careers to disclose grave threats to the health of the planet and the public due to corporate and government misconduct.

Unfortunately, most employees are unaware of these laws and six of the seven have a ridiculously short 30-day statute of limitations. Consequently, most workers who are fired for reporting illegal practices do not know their rights and have been unable to obtain adequate protection. Many are blocked from ever getting work in their industry again and become destitute. Almost all live in constant fear of retaliation.

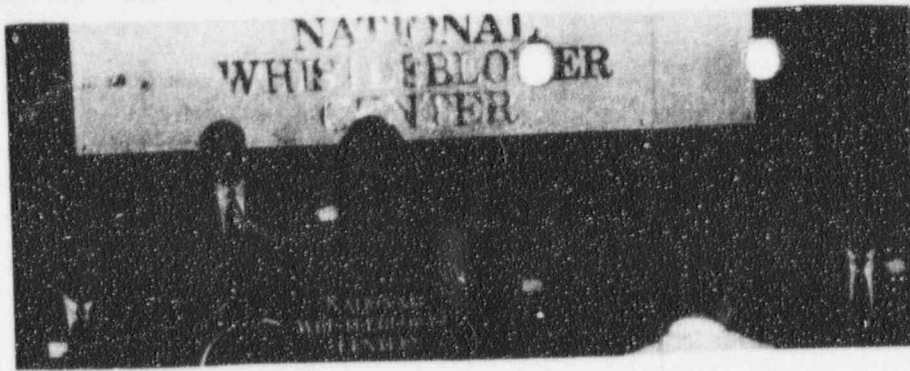
BANNING 'HUSH MONEY' AGREEMENTS

In 1993, the Center helped win precedent-setting rulings by both the Department of Labor (DOL) and the Nuclear Regulatory Commission (NRC). The Center's five-year battle in support of **Joseph Macktal, Jr.**, a worker at the Comanche Peak Nuclear Plant in Texas, led to U.S. Senate and NRC investigations that revealed scores of private contracts and settlement agreements that restricted the right of workers to testify about safety violations and gross misconduct at nuclear power facilities.

The NRC was ultimately forced to enact rules prohibiting such "money-for-silence" deals. The Center has filed a formal rulemaking petition with the Environmental Protection Agency (EPA) urging it to enforce the same ban on hush money deals for workers in other industries.



Joseph Macktal, Jr.



NWC press conference announcing a settlement with Arizona Public Service Company at the National Press Club, 1994: (left to right) NWC General Counsel Michael Kohn and Director of Nuclear Litigation David Colapinto, with nuclear whistleblowers Vera English, Linda Mitchell, Allan Mitchell and Thomas Saporito, Jr.

ment records, discriminating and retaliating against Dr. Marcus after he publicly criticized and opposed several EPA positions. Marcus had previously testified as an expert trial witness against more than 40 chemical corporations. His testimony has proven invaluable in focusing public attention and government action on ending contamination from lead, chlordane and other toxic substances.

NUCLEAR POWER PLANTS

Other commercial nuclear facilities where the Center is supporting whistleblowers include Brunswick (NC), Crystal River and Turkey Point (FL), Nine Mile Point (NY), Palo Verde (AZ), South Texas Nuclear Project (TX), Vogtle (GA), General Electric's Castle Hayne reprocessing plant (NC), and Browns Ferry (AL) and other plants operated by the Tennessee Valley Authority.

ATOMIC WEAPONS PLANTS

The Center is also working to establish legal protections for thousands of employees at U.S. Department of Energy (DOE) atomic weapons facilities. The Center is supporting the pending cases of five employees at the Los Alamos and Savannah River plants who reported: 1) major plutonium and tritium accidents; 2) leaking radioactive storage drums; 3) illegal onsite drug trafficking; 4) intimidation of employees; and 5) covering up and destroying significant information about contamination.

EXPOSING ENVIRONMENTAL & HEALTH THREATS

The Center supports whistleblowers in their efforts to protect the public and the environment, whether in private industry or government. In 1994 Center attorneys won the case of internationally renowned toxicologist **William L. Marcus**, whom EPA tried to silence by unjustly slandering and firing him. In another precedent-setting ruling, Secretary of Labor Robert Reich found EPA guilty of falsifying employ-

UNMUZZLING GOVERNMENT WORKERS

The Center is working to eliminate EPA "gag orders" on agency employees who have opposed the construction of toxic waste incinerators in low-income minority communities. EPA has forbidden **William Sanjour** and **Hugh Kaufman** to accept even bare-bones travel and other expense reimbursements from grassroots groups for speaking on their own time in an "unofficial" capacity.

In the words of D.C. Circuit Judge Patricia Wald, the effect is to "squench speech of the highest value in the First Amendment hierarchy ... Depriving the general populace of a valuable and often unique perspective on important issues affecting their welfare ..." A win in this case would set a new precedent to help free the voices of all federal whistleblowers.

Dr. William L. Marcus announces DOL order that EPA reinstate him at 1994 NWC Capitol Hill press conference.



RESOURCES: ORDER FORM

Please mark the number of copies you want and mail, fax or phone your order to our national office today.

___ *The Whistleblower Litigation Handbook* (New York: John Wiley & Sons, 1990) (442 pages) plus 1994 supplement. Highly praised by the *Legal Publishing Review* and the Environmental Law Institute. Special offer, \$94.50.

___ *The Labor Lawyer's Guide to the Rights and Responsibilities of Employee Whistleblowers* (New York: Quorum Books, 1988) (196 pages). Recommended by the *Human Resource Management News*. \$45.00.

___ *Legal Protection for Environmental and Nuclear Whistleblowers*. Fact sheets on the relevant laws. **FREE**.

___ *National Whistleblower Center* brochure. **FREE**.

___ *Whistleblowers Make the News, 1988-1994: Selected Media Coverage of Issues, Clients and Cases of the National Whistleblower Center*. \$15.00.

___ *American Political Prisoners: Prosecutions Under the Espionage and Sedition Acts* (New York: Praeger, May 1994) (240 pages). Foreword by Howard Zinn. \$49.95.

___ *Jailed for Peace: The History of American Draft Law Violators, 1658-1985* (New York: Praeger, 1987) (169 pages). Endorsed by the American Library Association Book-List and *International Journal on World Peace*. \$9.95

___ *Blowing the Whistle: How to Protect Yourself and Win* (1994, 30 min. video). Explains the laws and other considerations whistleblowers must understand, through stories of actual whistleblowers in industry and government. Narrated by Daniel Ellsberg. \$25 for individuals. \$95 for institutions.

___ *A Tribute to Roger Wensil* (1993, 15 min. video). Inspirational profile of the late pioneering atomic weapons whistleblower, twice fined from the Savannah River Plant in South Carolina. \$15.00.

\$ _____ Total order payment enclosed.
(no charge for shipping and handling)

(over)

5/94

SUPPORT THE CENTER

The National Whistleblower Center protects the public, workers and the environment by supporting precedent-setting litigation and public education. The Center provides consultation, information and referrals to whistleblowers nationwide, and alerts and educates the public about issues raised by whistleblowers. It also directly challenges government and corporate attempts to silence employee dissent.

The Center pledges to continue and to expand these vital programs and services and can only do so with your pledge of support. Contributors of \$30 or more receive the Center's newsletter and a free copy of our historical publication, *Whistleblowers Make the News, 1988-1994*. All contributions are tax-deductible.

Contributions are also needed for the **National Whistleblower Trust Fund**, a revolving loan fund to lend money to indigent whistleblowers who cannot afford effective legal representation. Thank you!

I enclose my tax-deductible contribution as noted:

National Whistleblower Center
 National Whistleblower Trust Fund
\$1,000 \$500 \$300 \$100 other \$ _____

Name _____

Address _____

Zip _____

Phone _____ Fax _____

For credit card payment, circle one: VISA/Mastercard
Card no. _____ Exp. Date _____

*Orders & contributions may be made by fax or phone
or mail this form with your check payable to:*

The National Whistleblower Center
415 Florida Avenue, NW
P.O. Box 26381
Washington, DC 20001-9996
(202)667-2075 • Fax (202)667-6124

ATTORNEY REFERRAL SERVICE & HOTLINE

In addition to directly assisting in precedent-setting cases, the Center welcomes whistleblower inquiries and operates a nationwide Attorney Referral Service and a hotline. Both services link potential whistleblowers with local attorneys who can provide legal counsel and representation. These services and the initial consultation are free.

The Center provides attorneys with the specialized training and education they need in the laws and regulations governing protection of environmental and nuclear whistleblowers. Most participating lawyers are highly experienced in labor, civil rights and related areas of litigation. *Attorneys interested in receiving whistleblower referrals are urged to contact the Center at (202)667-7515.*

PUBLIC EDUCATION & TRAINING

The Center alerts and educates workers, labor and community organizations and government agencies at all levels about the rights and legal protections mandated for environmental and nuclear whistleblowers. To this end the Center:

- disseminates information to labor, environmental, legal and other groups;
- conducts workshops, seminars and presentations;
- produces and distributes literature, videotapes, and public service and press announcements; and
- provides telephone consultation and referral.

The Center works in collaboration with labor unions, professional societies, members of Congress, local officials, journalists, educators, law schools, colleges, and civic, religious and environmental organizations. Recent workshops were conducted for the Southern Community/Labor Conference, Environmental Health Network and the United Association of Plumbers and Pipefitters and the building trades unions.

LEGISLATIVE OUTREACH & EXPERT TESTIMONY

The Center and its attorneys are pioneers, unsurpassed in experience and expertise in the field of environmental and nuclear whistleblower protection. Center attorneys submit oral and written testimony to Congress and administrative agencies, often by special invitation. The evidence and arguments they present provide the basis for strengthening and clarifying legislation aimed at protecting whistleblowers.

INTERNS, FELLOWS & VOLUNTEERS

The Center has a limited number of openings year-round for legal internships and fellowships, as well as other volunteer and intern opportunities for qualified individuals. The positions provide gratifying experience, learning and an excellent introduction to public interest law as an alternative to corporate litigation.

"In a time when heroes seem few and far between, you people stand as brave examples ... the thousands of lives you've saved as a result of your individual acts of courage ... encourages others to take the same tough stand."

*-Meryl Streep,
Actress and
Academy
Award winner,
in her statement
at the 1990
NWC Awards
Ceremony*



National Board of Directors

Nina Bell
Dennis Brutus
Michael D. Kohn
Stephen M. Kohn
Annette Kronstadt
Leslie Rose
Mark Toney
Carolyn Weaver
Barbara Wien
William Worthy
Rev. William Yolton
Howard Zinn

National Advisory Council

Hon. Frederick L. Brown
Rev. David W. Dyson
Daniel Ellsberg
Vera English
Monica Green
Tony Mazzocchi
Victor Navasky
William Sanjour
Susan Sarandon
Harvey Wasserman
Jeanne M. Woods
Gary Stern



WHISTLEBLOWER NEWS

Protecting the Public, Employees
And the Environment Through
Law and Education

Vol. 1 – No. 1
Winter 1994

Inside...

Center Calls New Agency Rules Ineffective, Misguided.....	3
Decisions and Developments in Whistleblower Protection.....	4
Attorney Referral Service and Helpline Assist Employees and Lawyers.....	5
Resources.....	5
Q&A: Legal Protection for Environmental and Nuclear Whistleblowers.....	6
Whistleblower Protection Act Reauthorized.....	6

Center Launches New Publications & Programs

The National Whistleblower Center is pleased to introduce Whistleblower News, a quarterly newsletter dedicated to supporting whistleblowers and educating the public through reporting and interpreting the latest decisions, issues and developments in whistleblower protection law. Information on receiving this and other Center publications and on Center programs and services is contained inside.

NRC, Utilities Fail to Protect Public And Workers from Radiation

Worker Exposed at Zion Exposes Law Enforcement

By Jeffrey S. Countryman & Herb Ettl

Millions of Americans have laughed at television's Homer Simpson, the fictitious nuclear power plant employee who discovers radioactive material in his clothing while driving home from work. But a case supported by the National Whistleblower Center indicates that such contamination of workers and exposure of the public to radiation may be all too common at America's nuclear plants.

Center attorneys expect *Boudrie v. Commonwealth Edison, et al.* to show that neither the federal Nuclear Regulatory Commission (NRC) nor the utilities it regulates are doing their job of protecting workers and the public from exposure to harmful radiation. The evidence also illustrates their failure to follow whistleblower protec-

tion provisions of the federal Energy Reorganization Act and the NRC's own policies mandating that workers who report such violations be supported and protected from retaliation, including harassment and dismissal.

On March 13, 1994, Steven Boudrie, an equipment decontaminator at the Zion Nuclear Power Station 50 miles north of Chicago, walked through radiation monitors before leaving work. It is a routine safety requirement for workers at nuclear power plants every day. The alarms rang, indicating the presence of radioactive material on Boudrie's body. Radiation protection technicians employed by Commonwealth Edison (Com Ed), the plant's operator, found that Boudrie's personal clothing was

continued on page 2

Labor Department Proposes New Whistleblower Protection Regulations

Adds Teeth, Shortens Review Filing Time to 10 Days

The Department of Labor (DOL) has published proposed new regulations for enforcing the whistleblower protection provisions contained in the seven major federal environmental and energy statutes (See summary, page 5). Most significant are the proposals that would implement the changes in

Section 211 of the Energy Reorganization Act (ERA) as amended in 1992. Separate procedures and time frames would be established for handling ERA complaints under the Code of Federal Regulations, Part 24.

Two changes are of particular importance. First, teeth are added to

continued on page 6

WHISTLEBLOWER NEWS

Vol. 1 No. 1, Winter 1994
ISSN 1079-0233

Published quarterly by
National Whistleblower Center
415 Florida Avenue NW
P.O. Box 26381
Washington, DC 20001-9996
(202) 667-2075 • Fax (202) 667-6124

Annual subscription rate is \$20 for individuals, \$35 for institutions and firms. Articles may be reprinted without charge or special permission provided credit is given to the National Whistleblower Center and an original printed copy is sent to the above address.

About the Center

The National Whistleblower Center was created in 1988 to meet the needs of whistleblowers for reliable information and effective legal representation. The Center supports precedent-setting litigation on behalf of employee whistleblowers, provides legal advice and referrals for counsel to whistleblowers nationwide, and educates the public about the rights of employees to make disclosures regarding corporate and government misconduct, environmental threats, and health and safety violations. The Center also advocates for the First Amendment rights of employees who engage in constitutionally protected speech. The Center welcomes requests for information, resources and legal assistance. It relies on tax-deductible contributions from individuals and foundations.

Vivian H. Mills, Executive Director
Herb Eitel, Editor and Director of
Policy and Communications

Board of Directors

Nina Bell
Dennis Brutus
Michael D. Kohn
Stanley M. Kohn
Annette Kronstadt
Mark Toney
Carolyn Weaver
Barbara Wien
William Worthy
Rev. William Yelton
Howard Zinn

Advisory Council

Alice Bendheim
Hon. Frederick L. Brown
Ray David W. Owen
Daniel Ellsberg
Vera English
Monica Green
Tony Mazzocchi
Victor Navasky
William Sanyour
Susan Sarandon
Harvey Wasserman
Jeanne M. Woods

NRC, Utilities Fail

continued from page 1

contaminated and sent him home in a paper suit. They sent his clothes with him in a plastic bag to be washed in a public laundromat.

For several weeks both before and after that incident, Boudrie sporadically set off some monitors at the end of his shift without triggering others. For Boudrie this verified what his co-workers suspected – that some of them were being contaminated without detection because some of the monitors were not working.

Boudrie raised this concern with his foreman and plant safety personnel but received little response. Then on March 16, he again triggered alarms –

radioactive material was found in the pocket of his jeans. At the end of that shift Com Ed and NRC personnel searched Boudrie's room at the nearby Parkside Motel with Geiger counters. They confiscated pants, overalls and a sweatshirt, all contaminated with microscopic radioactive particles.

"I think it's a big deal," Boudrie said, "because if I can make it out with that much on me, what is everyone else going home with?"

Hostile Work Environment

To Boudrie's dismay, the search of his room and his reassignment to a different shift that same day marked the beginning of a period of harassment by management and others. The hostility toward Boudrie included insults, accusations and assignment to inappropriate and demeaning duties, including picking up wood on the roof by himself. Co-workers called him "Silkwood," alluding to the famous nuclear plant technician who was killed in a car wreck after publicly divulging safety violations at her worksite. Finally, on April 7, Boudrie gave in and accepted his employer's offer for a layoff.

"I just couldn't take it any more," he said. "I felt I had no protection and there were so many violations going on."

"Under those circumstances, it amounts to a 'constructive discharge' and a refusal to perform hazardous work," observed David Colapinto, the Center attorney who represents Boudrie. "Boudrie is a victim of discrimination and must be compensated."

Section 211 of the Energy Reorganization Act of 1992 prohibits plant operators from creating a 'hostile work environment' in retaliation for a worker's blowing the whistle. This

prohibition was also upheld in a previous precedent-setting whistleblower case supported by the Center. The conclusions in that case have been adopted by the NRC.

*"... if I can make it out
with that much on me,
what is everyone else
going home with?"*

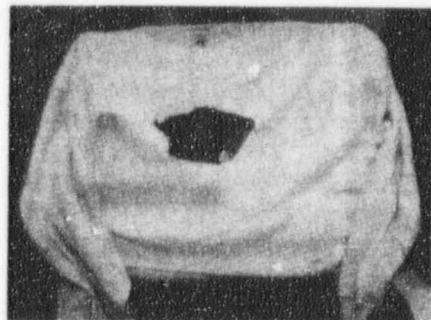
- Steven Boudrie

NRC's Inadequate Response

The day before his layoff, Boudrie felt intimidated during a meeting with his union steward and the Com Ed investigator who had inspected his motel room. He visited the NRC resident office at Zion to find out whether he was protected under whistleblower legal provisions. The site officer replied that she didn't know. Boudrie also told her what the investigator said in the meeting – that it was Boudrie's job to report any violations of radiation protection guidelines he saw. The site officer gave him contradictory advice. "I was told that wasn't my job," Boudrie recalled. "Nobody had any answers – no one protected me."

The NRC conducted a safety inspection at Zion in March partly in

continued on next page



Com Ed inspectors removed a portion of Steven Boudrie's sweatshirt found to be contaminated by radiation.

Center Calls New Rules Ineffective, Misguided

Two federal agencies responsible for protecting the public from the hazards of nuclear radiation have proposed new rules to enhance whistleblower protection. In practice, the proposed reforms offer little prospect for improvement, according to analysts at the National Whistleblower Center.

DOE Would Still Pay Costs Of Fighting Whistleblowers Despite 'Zero Tolerance' Aim

On October 17 U.S. Department of Energy (DOE) Secretary Hazel R. O'Leary announced what DOE has labeled a "zero tolerance" policy for whistleblower reprisals by DOE contractors. The DOE, which oversees all U.S. nuclear weapons facilities, is seeking public comments on its proposed policies by December 2.

Key recommendations call for:

- 1) prevention of retaliation through misuse of security clearance procedures;
- 2) limits on the payment of contractor litigation costs;
- 3) enhanced use of alternative dispute resolution;
- 4) an independent organization to conduct a comprehensive study of old cases to determine possible mechanisms "to right past wrongs;" and
- 5) an enhanced DOE Employee Concerns Program.

However, the government would

continue to reimburse DOE contractors for the cost of defending themselves in whistleblower suits and taxpayers would continue to pay the cost of a judgment or settlement in many such cases. "DOE contractors, such as Westinghouse, will continue to assume virtually no risk when they harass employees and aggressively defend whistleblower complaints," observed Stephen M. Kohn, chair of the National Whistleblower Center.

Kohn also opposed setting up an Employee Concerns Program, calling it "just a means to help employers identify potential whistleblowers and retaliate against or silence them."

"DOE's proposed new policy is hardly 'zero tolerance' of reprisals," Kohn said. "If the DOE were serious about protecting whistleblowers it would impose tough sanctions on those who retaliate against them, eliminate reimbursement for the cost

of defending lawsuits, and bar contractors who violate the law from conducting further business with the DOE."

Center Executive Director Vivian H. Mills questioned the appropriateness of DOE's move to displace the Department of Labor as the guardian of whistleblower rights at DOE facilities. "This is akin to having the fox guard the henhouse," she observed.

As evidence of the need for Labor's independent oversight of DOE whistleblowers, Mills pointed to what she called the Nuclear Regulatory Commission's "disgraceful failure to protect whistleblowers" at the government-owned nuclear plants run by the Tennessee Valley Authority.

Comments on the proposed rules should be sent by December 2 to:

Office of Contractor Employee Protection, FM-40
Department of Energy
1000 Independence Avenue SW
Washington, DC 20585.



Len Trimmer, a former senior technician at DOE's Los Alamos National Laboratory, speaks at a whistleblower law seminar.

NRC Delays New Rules

The U.S. Nuclear Regulatory Commission (NRC) has yet to implement its new rules on handling whistleblower complaints 17 months after the agency was criticized by its own inspector general for failing to investigate whistleblower complaints and to provide industry employees with more protection.

In response to those charges, NRC Chairman Ivan Selin promised Congress in June 1993 that he would set up a task force to study the issue. The NRC approved the task force recommendations in April 1994, but none of the proposed changes has taken effect. Even such simple changes as publishing an NRC policy statement on whistleblowing have yet to materialize.

"While there are some new ideas, the new rules will not reform the NRC's lax enforcement policy," Center attorney David Colapinto cautioned. "Nor will the new rules elevate whistleblower protection as an NRC priority. Meanwhile, nuclear industry management remains relatively free to harass and retaliate against whistleblowers, because the stronger measures that might help deter such behavior are stuck in bureaucratic limbo." ■

NRC, Utilities Fail

continued from page 2

response to the alarm incidents. The inspection report fell short of finding Com Ed in violation with respect to Boudrie. The report did however criticize Com Ed for its "lack of sensitivity" and "poor handling of a contaminated station laborer" (Boudrie). The NRC directed Com Ed to take corrective steps.

Com Ed responded by revising some of its safety procedures. Nevertheless, the NRC found in a follow-up inspection covering the period July 12 through August 22 that problems remained and that Com Ed had not effectively implemented the corrective procedures.

For example, the NRC report noted

that in two subsequent incidents alarms were set off by contaminated objects — a knife and a flashlight. Those violations were caused by Com Ed's failure to inform its staff how to properly read container markings.

"These are not isolated incidents at a single aberrant plant," attorney Colapinto warned. "The safety violations and retaliation we've seen in representing whistleblowers at nuclear plants over the years indicates that these problems are rampant throughout the industry. They will continue until the NRC changes its approach from complacency to commitment to enforce its regulations and the law." ■

Rulings Mixed in 3 Nuclear Power Suits

Reich Rules Contacts with News Media Are 'Protected Activity'

In an appeal brought under Section 211 of the Energy Reorganization Act (ERA), *Floyd v. Arizona Public Service Co. (APS)*, the complainant, Ranard Floyd, alleges that his employer, APS, took adverse action against him. Floyd had made safety complaints against APS, operator of the Palo Verde Nuclear Generating Station, and was a potential witness in the ERA case of a co-worker.

Secretary of Labor Robert B. Reich affirmed that Floyd engaged in protected activity when he met with a newspaper reporter and provided him documents concerning safety at Palo Verde. Reich, however, agreed with the ALJ's determination that Floyd had failed to establish that this protected activity was the likely reason for the adverse action.

Reich Rejects Protective Order, Requires Complete Records In Georgia Power Settlements

Secretary Reich has asserted his authority over settlements by denying

a joint motion for remand and a protective order in two ERA cases, *Fuchko and Yunker v. Georgia Power Company*. The administrative law judge (ALJ) had recommended to the secretary dismissal with prejudice but had not submitted the required record of the settlement, which could have been kept secret if the protective order had been granted.

Just as significant is the secretary's affirmation that "all documents in the record in an ERA case are government records subject to disclosure under the Freedom of Information Act" The cases were remanded to the ALJ for trial on the merits.

Sixty-Day Limit on Filing DOL Review Petitions Held To Include Weekends, Holidays

The U.S. Court of Appeals for the Sixth Circuit decided against a nuclear plant whistleblower on September 12, in another ERA case, *Bartlik v. U.S. Department of Labor and Tennessee Valley Authority*.

The court ruled that a petition for review of the secretary of labor's

decision in an employer retaliation case must be filed within 60 days even if the sixtieth day falls on a weekend or a legal holiday. The complainant argued that since the sixtieth day fell on a Sunday, he had until the next day to file by Rule 26(a) of the Federal Rules of Appellate Procedure. The court rejected several precedents offered in support of the complainant's argument as "not binding because they involved the filing of initial claims," and stated, "the ERA contains an explicit limitations period for filing petitions for review...." **WN**



At a Capitol Hill press conference Dr. William L. Marcus announces the DOL order that EPA reinstate him.

Marcus Win Extends Protection to All Federal Employees

Center attorneys represented top Environmental Protection Agency (EPA) toxicologist Dr. William L. Marcus in a recent precedent-setting victory. The decision extends whistleblower protection provided by the six major federal environmental laws to all federal employees. Secretary of Labor Reich found the EPA guilty of falsifying employment records, discriminating, and retaliating against Marcus, and ordered his reinstatement. The secretary also granted Marcus the largest compensatory damage award ever upheld under those provisions.

EPA fired the 18-year agency veteran after he publicly criticized and opposed several EPA positions. Marcus had also previously testified as an expert witness against more than 40 chemical corporations, helping to end contamination from lead, chlordane and other toxic substances. **WN**

Georgia Power's License Challenged

A former Georgia Power assistant general manager and whistleblower has brought a suit before the U.S. Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board. Allen Mosbaugh claims that Georgia Power improperly transferred control of its nuclear power plants to Southern Nuclear, a new subsidiary of its parent corporation, The Southern Company, and that both subsidiaries lack the requisite character, competence and integrity to operate nuclear power plants.

Georgia Power is still reeling from a proposed \$200,000 fine that the NRC recommended in May 1994 as a result of Mosbaugh's blowing the whistle on intentional safety viola-

tions. The commission found that company officials submitted false data to the NRC to hasten restart of the Vogtle nuclear plant following a 1990 site area emergency.

"The evidence shows that The Southern Company acted illegally and violated the Atomic Energy Act in taking over the nuclear operations of its subsidiary companies, Georgia Power and Alabama Power," said Center attorney Michael D. Kohn, who represents Mosbaugh. "The outcome of this case will determine how far the NRC will allow nuclear management to transgress and whether it will impose a significant penalty to deter future misconduct by industry executives."

Significant developments are expected within weeks. **WN**

Resource Order Form

Please mark the number of copies you want, clip this form, and mail, fax or phone in your order today.

Whistleblower News. Quarterly newsletter. Annual subscription rate is \$20 for individuals, \$35 for institutions.

No. _____ Amt. Due
_____ \$ _____

The Whistleblower Litigation Handbook: Environmental, Nuclear, Health and Safety Claims (500 pages including Fall 1994 Supplement) The definitive manual, recommended by *Legal Publishing Preview*. \$105

_____ \$ _____

The Labor Lawyer's Guide to the Rights and Responsibilities of Employee Whistleblowers. Praised by *Human Resource Management News*. \$45

_____ \$ _____

Legal Protection for Environmental and Nuclear Whistleblowers. Fact sheet summarizing the laws. FREE

_____ \$ _____

National Whistleblower Center. Basic brochure. FREE

_____ \$ _____

Whistleblowers Make the News. 200 pages of clips. \$15

_____ \$ _____

American Political Prisoners: Prosecutions Under the Espionage and Sedition Acts. Foreword by Howard Zinn (July 1994) \$49.95

_____ \$ _____

Jailed for Peace: The History of American Draft Law Violators, 1658 - 1985. \$9.95

_____ \$ _____

Blowing the Whistle: How to Protect Yourself and Win (35-min. video) \$95 for institutions. \$25 for individuals.

_____ \$ _____

A Tribute to Roger Wensil (15-min. video) \$15

_____ \$ _____

Please print

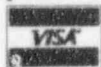
Name _____

Firm/Inst. _____

Address _____

Phone _____ Fax _____ Zip _____

For credit card payment circle one:



Card #

Exp. Date _____

Signature _____

Please make checks and money orders payable to:

National Whistleblower Center

P.O. Box 26381

Washington, DC 20001-9996

(202)667-2075 • Fax (202)667-6124



Attorney Referral Service and Helpline Assist Employees And Lawyers

The National Whistleblower Center has established a nationwide legal Helpline and an Attorney Referral Service aimed at linking qualified legal counsel with employee whistleblowers who need it.

In its first few months, the Service has grown to 80 attorney participants in 30 states. Dozens of potential whistleblower clients have been referred as a result of daily calls to the Helpline from threatened workers and their supporters.

Most participating lawyers are highly experienced in labor, employment, civil rights and related areas of litigation. Center attorneys and staff provide them with specialized materials and other support. There is no charge to callers.

For information and referral or to join the Attorney Referral Service call the Helpline at (202)667-7515.

Training Seminars

The Center conducts workshops and other presentations on whistleblower protection laws and strategies for attorneys, agencies, unions, and community and professional groups. The format can range from two hours to two days. Call the Center to arrange an event or find out when one will be offered in your area.

Support the Center

Contributions from public-minded individuals are vital to the continued effectiveness of the Center's work.

You can help by sending a tax-deductible donation to National Whistleblower Center today. For a gift of \$20 or more we will send you *Whistleblower News* for one year. Use the form at the left if you wish. Thank you for your generous gift!

Q&A: Legal Protection For Environmental and Nuclear Whistleblowers

What Federal Laws Protect Environmental & Nuclear Whistleblowers?

Seven major federal environmental laws (*Clean Air, Toxic Substances, Clean Water, Atomic Energy, Solid Waste, Safe Drinking Water and Superfund*) have special provisions protecting employee whistleblowers. Whistleblowers in the nuclear power and nuclear weapons industries are specifically protected under section 210 and 211 of the *Energy Reorganization Act*. When used, these laws have been effective in protecting employees who expose public health and safety violations.

Who Is Protected?

Almost any employee, whether employed in the private sector or by a local, state or federal government agency. Moreover, any employee of a Nuclear Regulatory Commission (NRC) or Department of Energy (DOE) regulated licensee, utility, contractor, subcontractor, agent or any other employer, can file under nuclear provisions.

Who Can File a Complaint?

Any employee who believes he or she has been discriminated against in retaliation for "blowing the whistle" on a safety problem or environmental violation, or for engaging in other activity protected under the law.

What Is Illegal Discrimination?

Almost any adverse change to the whistleblower's terms and conditions of employment is prohibited. This includes a wide range of actions from reprimands and downgraded evaluations to termination and blacklisting.

Where Should Complaints Be Filed?

These laws are administered by the U.S. Department of Labor (DOL). Complaints must be in writing and should be filed with the local Wage and Hour Office of the DOL and/or mailed to:

Office of the Administrator
Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

What Are the Statutes Of Limitations?

A complaint under six of the environmental statutes **must** be filed with the DOL in writing **within 30 days** of the time an employee learns that he or she will be, or has been, subjected to discrimination, harassment or retaliation. However, a nuclear industry employee filing a complaint under the Energy Reorganization Act **must file within 180 days**.

Do Other Laws Protect Whistleblowers?

Many states have enacted laws to protect whistleblowers. Most of these laws have a longer statute of limitations and other benefits unavailable under federal law. Stronger yet are the whistleblower protections and remedies contained in the *qui tam* provisions of the federal **False Claims Act**. However, these only apply when a federal government contract or subcontract and federal funds are involved. **WW**

**For resources, attorney
referral, or other information,
write the Center or call our
legal Helpline: (202)667-7515.**

Whistleblower Protection Act Reauthorized

On October 29, President Clinton signed into law the Whistleblower Protection Act reauthorizing the Office of Special Counsel (OSC) through fiscal year 1997 with several modest reforms.

The Act allows federal government whistleblowers the option to seek binding arbitration in their cases instead of Office of Special Counsel (OSC) investigation. The Senate, however, blocked inclusion of district court adjudication as an additional option, which was advocated in the House version of the bill (H.R. 2870) sponsored by Rep. Frank McCloskey (D-IN).

Congress also extended the Act's whistleblower protection to prohibit retaliatory use of psychiatric examinations. The Senate, however, rejected the House bill's recommendation that retaliatory revocation, suspension or denial of security clearances also be prohibited. **WW**

New DOL Regulations

continued from page 1

the ERA's requirements for posting notices of the employee protection provisions. Should an employer fail to post the required notice, the deadline for filing a complaint with the Administrator within 180 days would become "inoperative, unless the respondent is able to establish that the employee had actual notice of the provisions."

However, the proposed tight deadline for appealing decisions of administrative law judges to the Secretary of Labor would make it more difficult to appeal.

The proposal states: "To be effective, such a petition for review must be received within ten business days of the date of the decision" The National Whistleblower Center opposes the ten-day restriction as unreasonable. **WW**



Resources from

National Whistleblower Center

Whistleblower News

A quarterly newsletter reporting decisions and developments in whistleblower protection.
Premier issue: Winter 1994.

ISSN #1079-0233

Whistleblower News is an essential resource for attorneys, activists, whistleblowers and any employee in the public or private sector, who may be in the position of blowing the whistle on government or corporate wrongdoing. Each issue reports and interprets the latest judicial, administrative and legislative decisions, developments and trends in whistleblower laws and cases.

**Special introductory
annual subscription rate:**

\$20 for individuals,

\$35 for institutions & firms

New Video:

Blowing the Whistle: How to Protect Yourself & Win

©1994 by National Whistleblower Center
and Dialogue Productions, 35 minutes

The purpose of this program is to help potential whistleblowers or "ethical resisters" understand and use the laws designed to protect them, and to make what may be the most important decision of their lives.

-Daniel Ellsberg

Legal expert and author Stephen Kohn joins five environmental and nuclear whistleblowers in industry and government who describe their own fascinating experiences with exposing employer wrongdoing. Through moving personal stories and concise explanation, viewers are given comprehensive, accurate and up-to-date information about legal protection, strategy and other considerations in any employee's decision to blow the whistle. Narrated by *The Pentagon Papers* whistleblower, Daniel Ellsberg.

\$95 for institutions, \$25 for individuals

The Whistleblower Litigation Handbook: Environmental, Nuclear, Health and Safety Claims

By Stephen M. Kohn

Lead Attorney & Chair, National Whistleblower Center
Wiley & Sons, 1991, 500 pages ISBN: 0-471-55330-1
Fully updated with October 1994 Supplement

The foremost manual on environmental whistleblowing, this guide focuses on civil action through the Department of Labor to secure relief for private, public and contract employees under the whistleblower protection provisions of the seven major federal environmental and nuclear laws. Clear and concise for both laypersons and professionals, *The Whistleblower Litigation Handbook* gives researchers, attorneys, and students a step-by-step approach to this complex area of administrative and civil practice.

Unlike many would-be litigation manuals ... this book takes an organized approach to every aspect of this area of litigation ... Kohn cuts through the maze of federal administrative law and procedure ...

Anyone who has dealt with application of comprehensive federal statutes and corresponding agency regulations will appreciate Kohn's collection...

-Legal Publishing Preview

The Whistleblower Litigation Handbook (clothbound) answers key questions, including:

- Who is protected by whistleblower laws?
- Which activities are legally protected?
- What are the statutes of limitations?
- Can the complainant get reinstatement? Damages?
- Who pays attorney fees and costs?
How are they calculated?

Special offer: \$105*

includes Fall 1994 Supplement

*\$20 off the list price: \$125

American Political Prisoners: Prosecutions Under the Espionage and Sedition Acts

By Stephen M. Kohn

Lead Attorney & Chair, National Whistleblower Center

Foreword by Howard Zinn, author of *A People's History of the United States* & Professor Emeritus, Boston University

Praeger, 1994, ISBN: 0-275-94415-8, 240 pages

This just-published book is the first account of the personal lives of the nearly 1,000 long-term political prisoners arrested under various espionage and sedition laws. The reasons were their "blowing the whistle" on participation in World War I, their trade union activities, and/or their unpopular political or religious beliefs.

... the reader will be confronted with enormous crimes against the constitutional principle of free speech in a country that prides itself on its freedom and declares itself a model for democracy all over the world ... What Stephen Kohn has done is to document what happened, with the kind of specific detail ... that brings history alive in the most immediate way ...

—from the foreword by Howard Zinn

Based on the author's exclusive access to the uncensored prison files of many of these prisoners and documents obtained under the Freedom of Information Act, this valuable hardcover volume relates the activist and prison experiences of some of America's most famous and colorful labor, socialist and peace leaders.

**Hardback only,
\$49.95**

The Labor Lawyer's Guide to the Rights and Responsibilities of Employee Whistleblowers

By Stephen M. Kohn and Michael D. Kohn

Quorum, 1988, ISBN: 0-89930-207-6, 216 pages.

The Kohns provide a complete review of the applicable federal laws and how they have been interpreted. They analyze state court developments and describe the new tort based upon a "public policy exception" that explicitly protects whistleblowers in the private sector.

The authors explain the jurisprudential and constitutional roots of whistleblower protection, then outline the remedies available under state and federal law, including punitive and compensatory damages in wrongful discharge actions.

Contents include:

The Constitutional Development of Whistleblower Protection Law, Federal Protection for Employee Whistleblowers, State Protection for Employee Whistleblowers, Overview of a Whistleblower Claim, Protected Whistleblower Activity, Federal Preemption and Preclusion, Table of Cases, and Appendices -- Federal Whistleblower Protection Laws.

Hardback only - Supply limited, \$45

Jailed for Peace: The History of American Draft Law Violators, 1658-1985

By Stephen M. Kohn

Praeger, 1987, ISBN: 0-275-92776-8, 170 pages

Jailed for Peace is the first book ever to fully document the history and political impact of antiwar conscientious objectors.

— The Workbook

While a minority in all U.S. wars, draft resisters have helped alter American foreign and military policy, develop pacifist and humanistic ideals, and shape the modern peace movement. From colonial times to the present, thousands of ordinary Americans have suffered imprisonment, torture and even death rather than participate in war. Concise, clearly written, and painstakingly researched, the book tells their fascinating stories. But more importantly, Kohn analyzes the evolution and significance of their resistance in the social and historical context of their times and offers insights and lessons for our own.



**Now in Paperback,
Only \$9.95**

The Atlanta Journal

THE ATLANTA CONSTITUTION

September 18, 1990

Georgia Power accused of hiding Vogtle problems

Former manager says utility lied to NRC

By David Beasley
Staff writer

A former high-ranking manager at Georgia Power Co.'s Plant Vogtle has accused the utility of concealing safety problems from federal regulators and lying to them following a serious accident at the nuclear plant last March.

In sworn testimony to the U.S. Nuclear Regulatory Commission (NRC), Allen L. Mosbaugh, who formerly held the third-highest management position at Vogtle, alleged the utility lied about the reliability of a diesel generator that provided the plant's only backup after the March power failure, said Mr. Mosbaugh's attorney, Michael Kohn of Washington.

In a petition filed last Tuesday with the NRC, Mr. Mosbaugh also contends a waste filter sys-

tem at the plant is inadequate and could spew radioactive water into a nearby creek.

Mr. Kohn said the allegations, made verbally before the filing, prompted the NRC to conduct a surprise inspection last month of Vogtle, which is in Burke County near Augusta.

NRC spokesman Ken Clark confirmed that a team of 12 NRC investigators performed an unannounced safety inspection at Vogtle last month following "some allegations related to safety" at the plant. He would not reveal who made the allegations.

A report on the inspection will be issued within the next month, said Mr. Clark. The investigators did not uncover any problems serious enough to prompt the shutdown of the plant, said the spokesman.

Please see **VOGTLE, A9** ▶

Vogtle: NRC old utility ed about problems

Continued from A1

Georgia Power spokesman
on Van Mol said the NRC
on includes "false and inac-
" statements.

The issues raised already
been reviewed and dis-
ed by Georgia Power with
" Mr. Van Mol said.

Both Mr. Mosbaugh and Mar-
Hobby Jr., a former Georgia
er executive in Atlanta, have
complaints with the U.S.
partment of Labor under fed-
statutes designed to protect
istleblowers" in the nuclear
er field.

Mr. Mosbaugh, who earns
\$80,000 annually in a new
sion with the utility, was for-
ly acting general manager
plant support at Vogtle, the
3-billion facility.

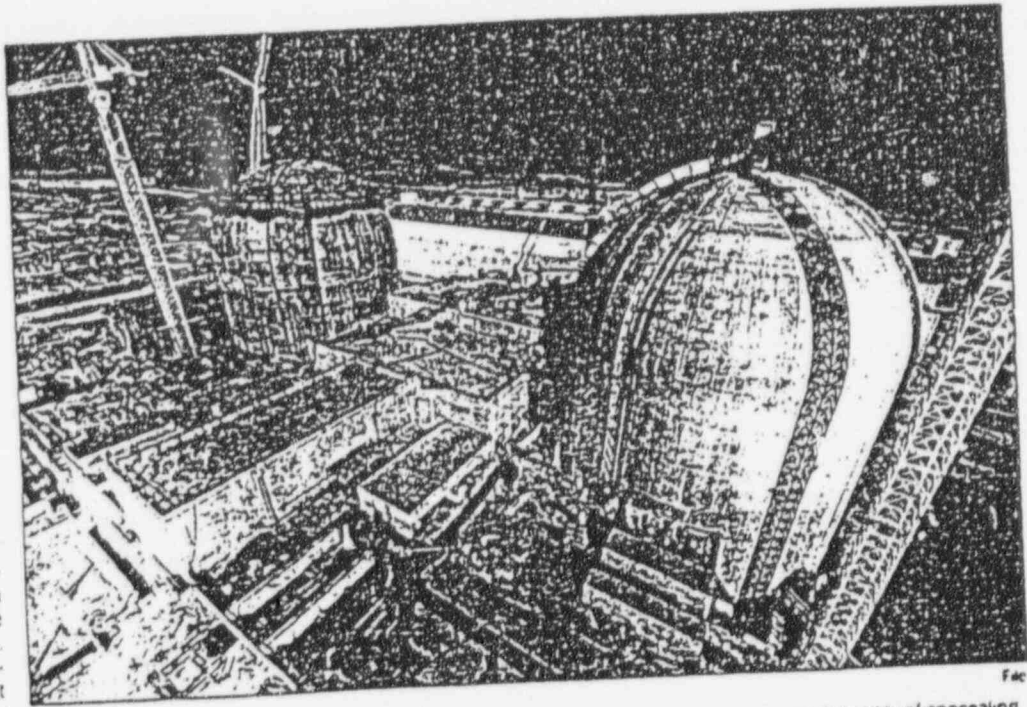
in his Labor Department
e, Mr. Mosbaugh, who has
ked the last 16 years as a nu-
r engineer, contends Georgia
ver Co. removed him from a
y review board last May 11
demoted him to a newly cre-
ed position with few specific
es after he complained about
ditions at Vogtle.

Georgia Power denied the al-
tation, saying Mr. Mosbaugh's
change resulted from previ-
sly planned management
its.

Mr. Hobby, who earned more
an \$100,000 annually as gener-
manager of nuclear operations
contract administration and as-
sistant to the senior vice presi-
ent, contends he was fired in
April for telling superiors that
the utility may have illegally
transferred control of Vogtle to a
subsidiary, Southern Nuclear
Operating Co. (SONOPCO) in
Birmingham.

Both Labor Department com-
plaints are still pending. Prelimi-
nary rulings by Labor Depart-
ment investigators have been in
favor of Georgia Power in both
cases.

Separately, the men have
both provided information about
alleged problems at Vogtle to the



Outside view of Georgia Power Co.'s Plant Vogtle in Burke County near Augusta. A former high-ranking plant manager, in a petition with the Nuclear Regula-

tory Commission, has accused the utility of concealing safety problems from regulators. Georgia Power says the petition includes "false" statements.



► The Vogtle Electric Generating Plant, is jointly owned by Georgia Power (45.7%), Oglethorpe Power Corporation (30%), Municipal Electric Authority of Georgia (22.7%) and the City of Dalton (1.6%).

► Construction of the plant began in 1974. The total cost of the plant was \$8.87 billion.

► The plant represents 12 percent of the state's total installed capacity.

► Plant Vogtle is one of Georgia Power's two nuclear facilities and is one of three nuclear facilities in the Southern electric system.

Among the most serious allegations is that Georgia Power gave NRC officials false information about the reliability of a backup diesel generator.

NRC, said Mr. Kohn.

Among the most serious allegations is that Georgia Power, following a potentially dangerous loss of power at Vogtle last March 20, gave NRC officials false information about the reliability of a backup diesel generator. Although the generator failed when the regular power supply was knocked out by a truck that hit a pole, Georgia Power officials allegedly told NRC officials that the generator's mechanical problems were quickly corrected.

However, "the diesel generator had actually continued to experience an excessive number of

trips and failures similar in nature to the failure which led to the March 20, 1990, blackout," Mr. Mosbaugh claims in the NRC petition.

A second backup generator was undergoing maintenance and was not operable when the blackout occurred.

During the 36-minute blackout caused by the truck accident, the temperature of water used to keep the nuclear fuel from melting heated from 90 degrees to 136 degrees, the NRC says.

Mr. Mosbaugh alleges "the diesel generator was so unreliable after the [accident] that Georgia Power Company was

eventually forced to initiate three different design changes to remove or modify numerous unreliable components."

The NRC petition, filed by Mr. Kohn on behalf of Mr. Hobby and Mr. Mosbaugh, asks the federal agency to hold hearings to investigate the allegations and determine whether Georgia Power has the "character, competence, fundamental trustworthiness and commitment to safety to operate a nuclear facility."

The two men also allege Georgia Power failed to tell the NRC about other technical problems and mishaps at the plant, such as the cracking of a water cooling line and the improper testing of valves.

The Augusta Chronicle

Tuesday, November 20, 1990

The South's Oldest Newspaper - Est. 1785

Vogtle must rehire whistle-blower

By Mike Wynn
and John Winters
Staff Writers

The U.S. Labor Department has ordered Georgia Power Co. to rehire a former senior manager at Vogtle Electric Generating Plant who was fired after filing safety complaints about the plant.

Georgia Power must restore Allen L. Mosbaugh to his former position with comparable salary; pay all costs incurred by him, including attorney fees; and give

him back pay dating to his Oct. 11 firing.

Georgia Power spokesman Tal Wright said the company will appeal.

Georgia Power fired Mr. Mosbaugh after it learned he was secretly taping conversations with plant officials. Mr. Mosbaugh said he was fired because he reported safety violations, and that he taped conversations because he feared harassment because of his allegations.

"I'm glad that the U.S. Department of Labor is on my side and they see that Georgia Power has been discriminatory and their actions could not stand up against the Labor Department's inspection," said Mr. Mosbaugh on Monday. "To be fired for raising the issues with the NRC is outrageous. It speaks very poorly for the company."

He said he would have to dis-

Please see VOGTLE on 5A

Continued from 1A

cuss terms for his return to work with Georgia Power officials before agreeing to take his job back.

But Mr. Wright said, "His conduct in taping employees of Georgia Power and the Nuclear Regulatory Commission cannot be tolerated in an environment that requires trust, and full and open communication among employees."

Mr. Mosbaugh, who said he made between \$80,000 and \$85,000 annually, filed three complaints with the Labor Department. He lost the first two, which are under appeal.

But Mr. Mosbaugh's attorney, Michael Kohn of Washington, D.C., said new information gleaned from the tapes will overturn the first two rulings.

The NRC, which oversees commercial nuclear plants, has listened to the tapes. An administrative judge refused a Georgia Power request to get copies of the tapes.

In the latest complaint, the Labor Department agreed with Mr. Mosbaugh's charges that he was fired for bringing safety allegations to the NRC.

The NRC is investigating several allegations made by Mr. Mosbaugh, but hasn't found anything yet to warrant closing the plant located near Waynesboro, Ga.

Mr. Mosbaugh said company officials lied to the NRC about the number of times two backup diesel generators had successfully started. The NRC used that incorrect information in allowing the plant to restart a reactor.

Problems with getting the generators started resulted in the

plant's first site area emergency - the second most serious of four nuclear classifications - on March 20.

In two letters and a verbal meeting, Georgia Power told the NRC the generators started up successfully every time.

Georgia Power officials said the incident was a mistake and was due to using incorrect information. The company has since sent the NRC a letter correcting the mistake.

That letter showed one generator started successfully 29 out of 31 tries, while the other one had 21 out of 29 successful starts.

Mr. Mosbaugh also alleged that Plant Vogtle officials knowingly risked an unplanned nuclear reaction at one of the plant's reactors by violating regulations.

In October 1988, plant employees opened two valves when the reactor was shut down. At the time, NRC regulations required those valves to be closed and locked during shutdown.

Ken McCoy, vice president for Plant Vogtle, said the valves were opened intentionally for less than five minutes at a time to add chemicals to the reactor tank. He said the action was allowed under the company's reading of the regulations, and there was no danger.

Georgia Power later got NRC approval in February 1990 to open the valves to add chemicals during a reactor shutdown.

Mr. Mosbaugh alleged that

opening the valves could cause an unplanned nuclear reaction by diluting the amount of boron in the reactor. Boron prevents a nuclear reaction.

Boiling of the reactor's cooling water within the core could start unless corrective actions - adding boron, dumping more water on the reactor core - was taken. Otherwise, the cooling water would boil, allow melting of the reactor core, and causing the release of large amounts of radioactivity.

The two complaints under appeal include Mr. Mosbaugh's charge that he was improperly removed from his position of acting assistant general manager of plant support, and of the plant review board.

But the Labor Department said the reassignment was proper, and that he was only in an acting capacity.

"These changes were temporary and had no effect on your pay or employment," the agency said.

In the second complaint, Mr. Mosbaugh alleged he had been downgraded on a evaluation and his company car was taken.

The Labor Department, however, said, "Your performance evaluation was based on your supervisor's assessment of your work and was not influenced by your protected activity."

The agency said that it was company policy for his car to be taken while he went through training.

The Augusta Chronicle

Tuesday, October 30, 1990 *

Georgia Power misled agency on generators, documents show

By John Wilentz
Staff Writer

On at least three occasions, the Vogtle Electric Generating Plant operator gave incorrect information to the Nuclear Regulatory Commission about the reliability of the plant's emergency generators.

Georgia Power Co. documents show the NRC used that incorrect information as part of its decision to allow Georgia Power to restart one of the site's reactors after the plant's first site area emergency - on March 20.

And the NRC, which regulates all com-

mercial nuclear reactors, is investigating why Georgia Power gave it incorrect data, according to commission spokesman Ken Clark. He said he could not comment further because the incident is under investigation.

Also, NRC and Georgia Power docu-

ments obtained by The Augusta Chronicle support charges made by a former senior Plant Vogtle manager that the company misled the NRC about the generators' reliability.

Those documents also show that it took Georgia Power more than four months to

give the NRC the correct data. The NRC didn't receive the information until after a hearing before its board in Washington to discuss the site area emergency.

Georgia Power officials said it would

Please see VOGTLE on 6A

Continued from 1A

be inappropriate to comment because of the NRC investigation.

On March 20, a truck servicing a transformer backed into a tower, knocking out a second transformer that provided power to Unit 1 of the two-unit power plant outside Waynesboro, Ga. One emergency diesel generator was down for maintenance. The other backup generator failed to start immediately.

A site area emergency - the second-most serious of four nuclear accident levels - was declared because it took longer than 15 minutes to get a backup generator working. It was only the second time such a declaration has been issued in U.S. history.

Georgia Power officials said the problem with starting the generator was due to a sensor that prevents it from overheating by shutting it down when temperatures get too high. Since the incident, the company has received NRC approval to bypass the automatic safety device in an emergency.

The incident prompted an investigation by the NRC into safety issues and the backup generators.

That investigation continues, and allegations made by Allen Mosbaugh, a former senior plant manager, are raising questions about Georgia Power's handling of the incident.

Mr. Mosbaugh contended he was demoted because he told company officials they were giving the NRC incorrect information about the generators' reliability.

Georgia Power recently fired Mr. Mosbaugh because he started secretly taping conversations with other employees after he brought the discrepancies to the company.

Mr. Mosbaugh now is referring all questions to his attorney, Michael Kohn of Washington, D.C. Mr. Kohn was out of town and could not be reached for comment on Monday.

A March 23 letter from the NRC to W.G. Hairston, senior vice president of nuclear operations for Georgia Power, said, "Unit 1 will not be taken critical until the regional administrator is satisfied that appropriate corrective action has been taken and the plant can safely return to operation."

One of the NRC's concerns was for Georgia Power to demonstrate that the backup generators would work.

On April 9, Mr. Hairston requested approval - in a letter known as a Confirmation of Action Letter - from the NRC to restart Unit 1. That approval was given a few days later.

"Both the COAL (Confirmation of Action Letter) and the LER (Licensee Event Response) contained known false statements intended to mislead the NRC with false assurances about the reliability of the diesel generator whose failure resulted in the site area emergency."

Michael Kohn,
attorney

"Since March 20, the 1A DG (first backup generator) has been started 18 times, and the 1B DG (second backup generator) has been started 19 times," Mr. Hairston wrote in his April 9 letter. "No failures or problems have occurred during any of these starts."

That statement also was made verbally to NRC officials in a meeting with Georgia Power executives on the same day.

In a May 14 letter summarizing the April 9 meeting, the NRC wrote to Mr. Hairston:

"It is our opinion that this meeting was beneficial. Your presentation at this meeting and the items specified in your April 9, 1990, letter demonstrated appropriate correct actions to justify that the plant could safely return to power operation."

But according to a Sept. 11 "request for proceedings and imposition of civil penalties" letter to the chairman of the NRC, Mr. Kohn - Mr. Mosbaugh's attorney - said that Mr. Mosbaugh told the plant's general manager a day after the April 9 letter was written that the information in that letter was incorrect.

In an April 19 Licensee Event Report, Mr. Hairston again wrote to the NRC:

"After the 3-20-90 event, the control systems of both engines have been subjected to a comprehensive test program. Subsequent to this test program, DG1A and DG1B have been started at least 18 times each and no failures or problems have occurred during any of these starts."

But Mr. Kohn said in his response letter that Mr. Mosbaugh informed Mr. Hairston during a telephone conversation on April 19 - before Mr. Hairston sent the letter - that the generators had failed start-up tests.

Mr. Kohn also said Mr. Mosbaugh told the plant's general manager on April 30 that information sent to the NRC about the generators was incorrect.

On May 10, Mr. Mosbaugh, who was chairman of the plant's top safety board, wrote a letter to then-general manager George Bockhold that the incorrect statements must be corrected, Mr. Kohn's letter said.

The next day, Mr. Mosbaugh was taken off the safety board, according to Mr. Kohn's letter.

"Both the COAL (Confirmation of Action Letter) and the LER (Licensee Event Response) contained known false statements intended to mislead the NRC with false assurances about the reliability of the diesel generator whose failure resulted in the site area emergency," Mr. Kohn's letter said. "But... the diesel generator had actually continued to experience an excessive number of trips, failures and problems similar in nature to the failure which led to the March 20, 1990, station blackout."

It was not until Aug. 30 that Georgia Power informed the NRC that there were problems with starting up the generators, according to documents.

"The purpose of this letter is to correct the figures related to the number of DG (diesel generator) starts reported in the April 9th letter," Mr. Hairston wrote. "For DG1A, there was a total of 31 start attempts and 29 of these attempts were considered successful after the two failures associated with the March 20 event."

"For DG1B there was a total of 29 start attempts and 21 of these attempts were considered successful," Mr. Hairston wrote.

When asked to comment, Georgia Power spokesman Todd Terrell said, "because it is a matter under review by the NRC, it is not appropriate for us to comment on it at this time."

The Augusta Chronicle

Saturday, November 3, 1990

The South's Oldest Newspaper - Est. 1785

Vogle official concedes wrong information given

By John Winters
Staff Writer

A senior Georgia Power official acknowledged Friday that the utility originally gave the Nuclear Regulatory Commission incorrect information about the reliability of emergency generators at Vogle Nuclear Power Plant.

But Ken McCoy, vice president of Plant Vogle, said the company wasn't trying to mislead the commission, blaming miscommunication for the foul-up.

The commission, which oversees commercial nuclear plants, used that incorrect information in its decision to allow Georgia Power to restart one of Plant Vogle's reactors about three weeks after a site area emergency March 20.

The incorrect information concerned the number of times two backup diesel generators had successfully started. The commission is continuing an investigation into why Georgia Power gave incorrect data.

"There have been implications that we were try-

Please see VOGLE on 7A

Vogle: Board given wrong data

Continued from 1A

ing to mislead the NRC," Mr. McCoy said. "That is not true. The NRC had people there while we were running the tests on the diesels.

"In retrospect, the data was in error that we submitted," he added. "But we had no intent to mislead them."

On three separate occasions - a meeting between the utility and the commission on April 9, and letters to the commission on April 9 and April 19 - Georgia Power officials said one of the generators had started 18 out of 18 attempts, while the second generator had started 19 out of 19 attempts.

Actually, one generator started successfully in 29 out of 31 tries, while the other one had 21 successful starts out of 29 attempts. The company tried to correct the discrepancies in May, but the situation was not officially cleared up until an Aug. 30 letter to the commission.

Problems in getting the generators started led to the March 20 site area emergency - the second-most serious of four nuclear incident levels. It was only the second time in the nation's history such a declaration has been made.

On March 20, a truck servicing a transformer backed into a tower, knocking out a second transformer that provided power to



Vogle official Ken McCoy: No intent to mislead Nuclear Regulatory Commission.

Unit 1 of the two-unit power plant near Waynesboro, Ga. One emergency diesel generator was down for maintenance. The other generator failed to start immediately that day.

The site area emergency was declared because it took longer than 15 minutes to get the backup generator working.

Georgia Power officials said the problem with starting the generator was due to a sensor that prevents the generator from overheating by shutting it down when temperatures get too high. Since the incident, the company has gotten approval from the commission to bypass the automatic safety device in an emergency.

The March incident prompted an investigation by the commission into safety issues and the backup generators.

Mr. McCoy said that in the April 9 briefing and letter to commission officials, plant managers did not use all available information in determining successful generator starts.

During the briefing, plant officials used data from the operators' log. Operators consider a test "successful" if the diesel generator starts up and runs, he said. Based on that, all the attempts were successful for both generators.

But an engineers' log showed that some of the start-up tests were not "successful" because the generator would later shut itself down due to various sensor alarms - such as too high a temperature or vibrations.

"That's my understanding of the basis of the confusion," Mr. McCoy said. "Our first report was based on the operations log."

About April 30, Georgia Power learned of the failed tests and that the "statement was erroneous," Mr. McCoy said. "We immediately moved to correct the situation. We verbally notified the NRC resident inspector and talked with the regional officials."

A revised letter was sent on May 9 that gave the correct information, but that letter also had additional information about test results beyond the original timeframe mentioned in the April 9 and 19 letters.

The commission then instructed Georgia Power to send another letter outlining the number of successful starts between March 20 and April 9, Mr. McCoy said. That letter was sent Aug. 30.

er, knocking out a second trans- tion in determining successful and April 9, Mr. McCoy said. That letter was sent Aug. 26.

The Atlanta Journal

THE ATLANTA CONSTITUTION

SUNDAY, NOVEMBER 25, 1990 \$1

Nuclear plant whistleblower awaiting verdict

By Ben Smith III
Staff writer

When Allen L. Mosbaugh decided to tell the Nuclear Regulatory Commission (NRC) things weren't right at Georgia Power's Plant Vogtle, he thought about losing his job and possibly being ridiculed by his co-workers. He was prepared for both.

He was not prepared for the probing question that came from his 11-year-old son, Jason: "Daddy, why did you do that? You didn't have to tell on them. You would have still had your job." Jason had seen the newspaper stories about his father's

complaints to the NRC about the Georgia Power Co.'s alleged mismanagement of Plant Vogtle. Jason noticed his father was leaving for work in the mornings. "You've got to tell the truth," Mr. Mosbaugh said he answered

NRC weighs engineer's claims

his son. Jason then replied, "That's stupid," recalled the 42-year-old nuclear engineer, who has three younger children. Indeed, in taking on the state's most powerful utility, Mr. Mosbaugh, formerly Vogtle's third-ranking manager, had

Please see VOGTLE, A8



Allen Mosbaugh, a nuclear engineer, says tapes will prove charge against his employer.

Continued from A1

risked his paycheck, alienated friends and co-workers, and might have irreparably damaged his career in the nuclear power field.

But to Mr. Mosbaugh, the alternative was worse.

He became a whistleblower. A staunch supporter of nuclear power, Mr. Mosbaugh now is an unlikely — and unwilling — hero for anti-nuclear activists; and, in one Sunday school class, an example of a biblical David challenging a Goliath.

Mr. Mosbaugh won a rare victory nine days ago when a U.S. Department of Labor investigation concluded the power company illegally fired him last month, even though investigators had sided with the utility on two previous complaints. The company, which has been ordered to rehire Mr. Mosbaugh and pay his lost wages and legal costs, has filed an administrative appeal.

"Under federal law, if you know that the plant's done something wrong, you actually have a moral and a legal obligation to expose that," Mr. Mosbaugh said during an interview at his Columbia County home. "Because if you don't, you become a party to it."

But to Georgia Power officials and some Vogtle managers, Mr. Mosbaugh is a loose cannon, a Don Quixote searching out corruption where it does not exist and a threat to co-workers whose conversations he recorded for six months. Company officials said they fired him because his co-workers could never trust him, knowing they might be taped.

The NRC is reviewing Mr.



Kenneth McCoy
The plant vice president denies an employee's allegations of improprieties.



Staff

Mosbaugh's tapes, and he is confident they contain evidence of Vogtle violations.

Mr. Mosbaugh, a Vogtle employee since 1984, has alleged that Georgia Power — among other things — lied to the NRC about the reliability of a backup diesel generator that failed in March after a fuel truck hit a utility pole and knocked out the plant's regular power supply.

The power loss caused the water that cools the nuclear fuel to overheat, which could have led to a serious nuclear accident had power not been restored.

Georgia Power officials have denied Mr. Mosbaugh's allegations, although they conceded he may have raised some valid, but minor, procedural concerns.

"No human endeavor is ever perfect," said C. Kenneth McCoy, Plant Vogtle's vice president. "If any of us thought that you have to be infallible to run a nuclear power plant, we wouldn't do it."

"That's why we have so many safety nets and checks and balances — safety net after safety net, check after check," he said during a recent interview at the plant, in which he was accompanied by Gordon Van Mol, a Georgia Power spokesman from Atlanta, and an attorney, Jesse Schaudies Jr.

But Mr. Mosbaugh, who was interviewed several hours earlier in his suburban Augusta home, said the nuclear power industry must abide by far higher



W. A. Bridges Jr./Staff

At home with his wife, Kathy, engineer Allen Mosbaugh awaits the NRC's findings on his charges of unsafe practices at Plant Vogtle.

standards.

"No detail is so small that it doesn't matter," said Mr. Mosbaugh, who holds a master's degree in chemical and nuclear engineering from the University of Cincinnati. "A single mistake can result in disaster in terms of human life and financial loss. You just can't be casual about your approach."

During the interview in his sparsely decorated living room,

his wife, Kathy, occasionally entered the room and interrupted him.

"Did you tell him that if there's another accident like Three Mile Island, it'll be the end of nuclear power?" Mrs. Mosbaugh asked, adding that she stands firmly with her husband.

In June, three days before Mr. Mosbaugh's first Labor Department complaint — in which he claimed that he had been un-

fairly demoted — a large settlement proposed by his attorneys was rejected by Georgia Power, Mr. McCoy said. Neither Mr. Mosbaugh nor Georgia Power officials would divulge the amount of the proposed settlement.

Mr. McCoy, while acknowledging Mr. Mosbaugh's right to complain to federal regulators, said his concerns about plant operations could have been addressed in-house. Mr. Mosbaugh contends he had followed that route and was stymied every step of the way.

Mr. Mosbaugh, a 16-year veteran of the nuclear power industry who helped start several nuclear plants, said he noticed a slackening in the enforcement of regulations at Vogtle more than two years ago during a management change. Then, Georgia Power was attempting to shift the control of its nuclear plants to a Birmingham-based subsidiary, SONOPCO.

Mr. Mosbaugh said the problem worsened until he discovered last fall that in 1988, top Vogtle officials willfully violated an NRC regulation during a reactor shutdown. Georgia Power officials say it was merely a disagreement over the interpretation of the regulation.

"If you cut corners on [regulations], you can do things a lot faster," Mr. Mosbaugh said. "And there continued to be operator mistakes ... and nobody really came down on anybody."

After a month of soul-searching, Mr. Mosbaugh said, he reported the alleged violation to the NRC. He followed with further complaints and began carrying a micro-cassette tape recorder in his pocket.

Mr. Mosbaugh claims he was harassed when some colleagues and superiors began to suspect him of being a whistleblower. This year, Mr. Mosbaugh, who earned an \$80,000 salary, said he was demoted and given make-work assignments. He said he also was removed from the plant's safety review board and denied special training for a higher position.



Steam billows from the cooling towers of Georgia Power's Plant Vogtle near Augusta, which is accused of unsafe practices.

Mr. McCoy said the company never discriminated against Mr. Mosbaugh, but noted that evaluations of his performance indicated he had difficulty getting along with his peers. Also, he said, when Mr. Mosbaugh was transferred from his temporary role as the plant's No. 3 manager, his former position had been eliminated during a company reorganization.

Georgia Power has argued it never considered Mr. Mosbaugh a serious candidate for promotion because he had repeatedly told his colleagues of his successful stock market ventures and plans for early retirement. Mr. McCoy said the company was reluctant to invest thousands of dollars to train Mr. Mosbaugh for a higher position if he had long-term plans to remain.

Several current and former Vogtle employees had mixed reactions to Mr. Mosbaugh's predicament. Nearly all refused to divulge their names for fear of retribution, but all said that Mr. Mosbaugh was a highly intelligent and competent employee.

June 7, 1991

THE ATLANTA CONSTITUTION

NRC considers revoking licenses of Vogtle workers

By Ben Smith III
Staff writer

The Nuclear Regulatory Commission (NRC) may seek to have the licenses of three Plant Vogtle employees revoked following an investigation of allegations of safety problems at the Burke County plant.

Michael Kohn, attorney for Allen L. Mosbaugh, a former plant manager who made the allegations, said Thursday the NRC recently sent letters to the Georgia Power Co., asking the utility "to explain why their licenses should not be revoked."

NRC and Georgia Power officials confirmed the existence of the letters but declined to discuss specific details contained in them.

"We have sent letters involving some potential enforcement matters. That is all we have to say until the action is complete," said NRC spokesman Frank Ingram, contacted late Thursday.

A final decision will be made after a meeting between the NRC and Georgia Power, officials said.

"We've received the letters. The NRC continues to investigate certain events that occurred in 1988," said Georgia Power spokesman Tal Wright. "We are continuing to cooperate and provide any information they request."

The NRC has investigated up to 25 potential safety violations at Plant Vogtle alleged by Mr. Mosbaugh. The most serious of the allegations is that plant officials lied to the NRC about the reliability of a backup diesel generator that failed after a potentially disastrous accident in March 1990.

Mr. Kohn said the recent NRC letters to Georgia Power

The most serious of the allegations against Plant Vogtle is that plant officials lied to the NRC about the reliability of a backup diesel generator that failed after a potentially disastrous accident in March 1990.

address only part of the investigation — that plant operators in October 1988 risked a nuclear reaction by opening two valves to add water to the reactor system during a shutdown.

Mr. Mosbaugh has said the NRC requires the valves be kept closed during shutdowns. By adding water, the operators diluted the concentration of boron, thus risking an unsafe reaction.

Georgia Power has maintained it was not an intentional violation but a different interpretation of regulations. A follow-up investigation determined that the practice posed no danger, company officials have said.

Mr. Mosbaugh, who was fired from the plant in October, refused to comment Thursday. Last November, a U.S. Department of Labor investigation concluded that he was illegally fired, but Georgia Power filed an administrative appeal.

The Augusta Chronicle

July 10, 1991

Utility exec accused of lying under oath

By John Winters
Staff Writer

A senior Georgia Power Co. executive made false statements under oath to the Nuclear Regulatory Commission investigating alleged safety violations at Plant Vogtle, according to documents filed Monday with the commission.

In the amendment to an earlier petition, attorneys for Allen Mosbaugh, a former senior manager at the two-reactor-unit plant, accused senior officials of making false statements "intended to cover up intentional wrongdoing on the part of Georgia Power Co. and to otherwise obstruct the NRC's ongoing investigation."

Because of that, Mr. Mosbaugh's attorney, Michael Kohn, has asked the commission

to issue a "show cause" order as to why it should not suspend Georgia Power's license to operate Plant Vogtle.

Mr. Mosbaugh, who was fired from the plant last year after secretly taping conversations with other employees, has made several allegations to the commission about safety problems at the site. Last year, his allegations that Georgia Power had given the commission incorrect information were admitted by the company and prompted the current investigation.

Georgia Power, which operates the plant outside Waynesboro, Ga., has denied Mr. Mosbaugh's latest allegations, as it has all other charges.

Please see VOGTLE on 5A

Continued from 1A

Mr. Mosbaugh's complaints came after a March 20, 1990, incident at the plant in which a truck servicing a transformer backed into a tower, knocking out a second transformer that provided power to Unit 1. One emergency diesel generator was down for maintenance. The other generator failed to start immediately that day.

In a Sept. 11, 1990, petition, Mr. Mosbaugh accused the utility of lying about subsequent tests to determine the reliability of those generators.

On three separate occasions - during a meeting between the utility and the commission on April 9, and in letters to the commission on April 9 and 19 - Georgia Power officials said one of the generators had started 18 out of 18 attempts, while the second generator had started 19 out of 19 attempts.

Actually, one generator started successfully 29 out of 31 tries, while the other one had 21 successful starts in 29 attempts. The discrepancies were not officially cleared up until an Aug. 30, 1990, letter to the commission.

The commission, which regulates commercial reactors, used

the incorrect information in its decision to let Georgia Power restart Unit 1 after the incident.

Georgia Power officials later acknowledged that incorrect information was given to the commission, but blamed the problem on a miscommunication and said there was no intention to mislead.

The petition filed Monday is an amendment to the original Sept. 11, 1990, petition.

Earlier this year, the commission asked Georgia Power to submit additional information - under oath - concerning Mr. Mosbaugh's original petition.

According to Monday's petition, R.P. McDonald, executive vice president for the utility, made false statements about an April 19, 1990, telephone conference call among senior plant managers to discuss the generators.

The conference call was made hours before Georgia Power sent the letter to the commission saying the generators started every time during tests.

Mr. McDonald said under oath that George Hairston, senior vice president for Georgia Power, did not participate in that conference call, the petition said.

However, the petition said Mr. Mosbaugh's attorneys have sub-

mitted tapes to the commission that showed Mr. Hairston was involved in the conversation and that questions were raised about the reliability of the generators during that conversation.

"The truth is that Mr. Hairston did participate in the April 19, 1990, conference call and he did have firsthand knowledge of the fact that the information regarding the start data of the diesel generators was false and inaccurate," the petition said.

Mr. Kohn, Mr. Mosbaugh's attorney, said his client told senior managers about the problems with the generators before the conference call. He would not say who Mr. Mosbaugh told, although Mr. Kohn did say his client participated in the conference call.

"Mr. McDonald's sworn statement to the contrary constitutes a material false statement made with the intended purpose of derailing ongoing NRC investigations."

In a prepared statement, Georgia Power spokesman Tai Wright said, "We have not seen Mr. Mosbaugh's latest filing."

"It is important to remember that prior to filing his original petition, Mr. Mosbaugh brought claims against Georgia Power to the Department of Labor, seeking monetary compensation. His Mosbaugh's previous allegations were based on false and inaccurate statements. We doubt this latest revision to his petition is any different."

Ga. Power probed by feds

Alleged lie about safety of Vogtle is focus of criminal investigation

By David Beasley
STAFF WRITER

The U.S. Justice Department is conducting a criminal investigation into allegations that Georgia Power Co. officials lied to the Nuclear Regulatory Commission (NRC) about the safety of Plant Vogtle near Augusta.

The investigation was confirmed for the first time by the NRC in documents filed recently in the case of Allen L. Mosbaugh, a former high-ranking manager at the nuclear plant, involved in a lengthy whistleblower action against the utility.

In the document, NRC declines to comment on Mr. Mosbaugh's allegations because "these allegations are being pursued by the Department of Justice for possible criminal prosecution."

Michael Kohn, attorney for Mr. Mosbaugh who specializes in whistleblower cases, said a federal grand jury has been convened in Atlanta to consider the case.

Joe Whitley, U.S. Attorney for the Northern District of Georgia, declined to confirm or deny the existence of a grand jury investigation as did a spokesman for Georgia Power.

Most serious charge: They lied

The most serious of Mr. Mosbaugh's charges is that Georgia Power officials lied to the NRC about the reliability of a crucial backup generator following a March 1990 accident at the plant.

The generator failed after the regular power supply was knocked out by a truck that hit a pole, causing a 36-minute blackout.

A second backup generator was undergoing maintenance at the time of the accident and was not operable.

During the blackout, the temperature of water used to keep the nuclear fuel from melting heated from 90 degrees to 136 degrees, the NRC says.

Georgia Power officials allegedly told NRC officials that the generator's mechanical problems were quickly corrected.

But, according to Mr. Mosbaugh, the generator continued to be mechanically unreliable and several components eventually had to be replaced.

Mr. Mosbaugh, formerly the third highest ranking manager at Vogtle, claims in a complaint filed with the U.S. Department of Labor under a law designed to protect whistleblowers that he was demoted after complaining

about safety problems at the plant.

He later was fired after Georgia Power learned that he had secretly tape-recorded conversations with fellow plant employees.

Those tapes were later turned over to the NRC. According to Mr. Kohn, the tapes are the "linchpin" of the criminal investigation.

Georgia Power spokesman Tal Wright declined to comment on the criminal investigation.

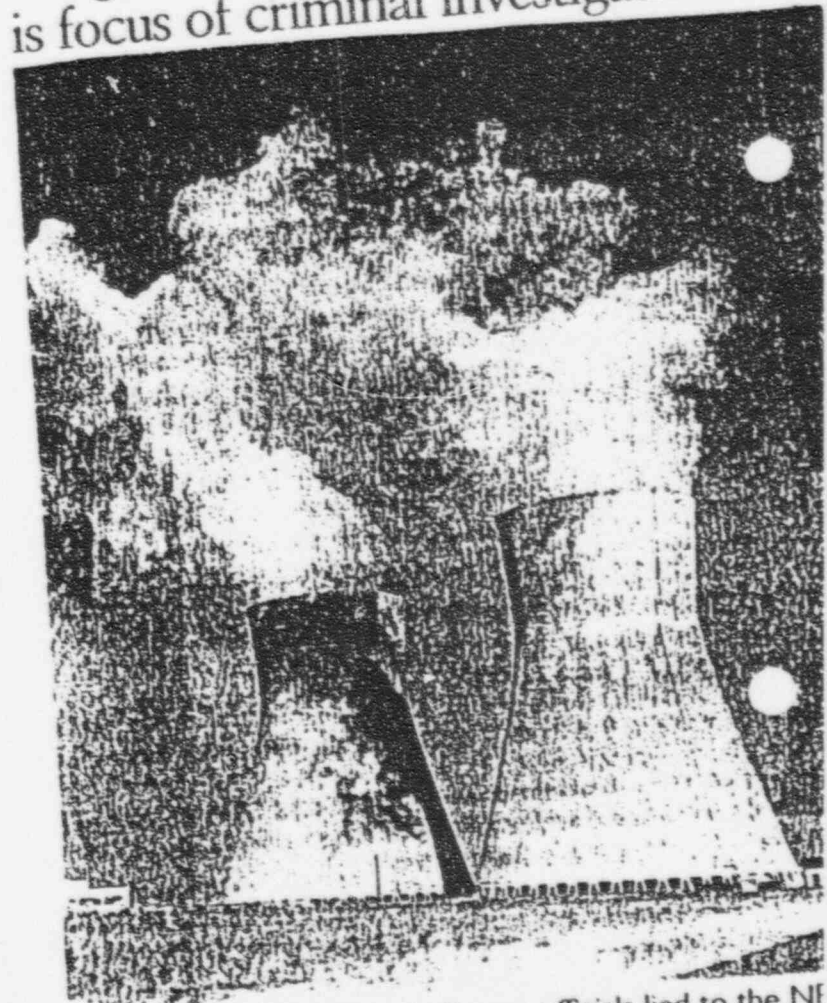
But in a statement, the utility denied ever attempting to mislead NRC.

And they point out that a Labor Department administrative law judge ruled that Mr. Mosbaugh was lawfully fired.

That decision is under review by the office of the U.S. Labor Secretary.

In a separate action, Mr. Mosbaugh has filed a petition with NRC seeking to block transfer of the Vogtle license from Georgia Power to a utility subsidiary, Southern Nuclear Operating Company, because of the alleged safety violations.

In documents filed during that proceeding, NRC acknowledges for the first time the existence of a criminal investigation.



An allegation that Georgia Power officials lied to the NRC about the reliability of a crucial backup generator following March 1990 accident at Plant Vogtle is under investigation

The Augusta Chronicle

February 24, 1993

The South's Oldest Newspaper - Est. 1785

NRC board agrees to hear whistle-blower's petition

By John Winters
Staff Writer

WASHINGTON — An administrative board has agreed to hear a petition alleging a subsidiary of The Southern Co. lacks the "character, competence and integrity" to operate Plant Vogtle.

In a Feb. 18 ruling, the Nuclear Regulatory Commission's Atomic Safety and Licensing Board granted a petition from former Georgia Power Co. official Allen Mosbaugh to hear his allegations.

He alleges company officials lied about the reliability of emergency equipment — namely diesel generators — at Plant Vogtle after a March 1990 site area emergency in an effort to get permission to restart a nuclear reactor.

The ruling came in the midst of

a request from Georgia Power Co. to transfer the operating license of Plant Vogtle to Southern Nuclear Operating Co. Both are subsidiaries of The Southern Co., and the transfer would be a change mainly in name only.

Mr. Mosbaugh petitioned to intervene in the request for the change, arguing that because company officials lied to the NRC, which oversees commercial nuclear plants, the request should be denied.

"We find that there is adequate basis for Mr. Mosbaugh's contention that at least one senior officer of Southern Nuclear is lacking in character and competence and that Southern Nuclear lacks the integrity required of a licensee for the operation of a nuclear power plant," the order said.

"If this contention were sus-

tained, we might direct that the license amendment be denied or conditioned on changes in the structure and personnel of Southern Nuclear," it concluded.

The ruling is similar to that of a grand jury finding sufficient evidence to take a case to trial. No decision is expected for several months.

Georgia Power spokesman Tal Wright said, "We are disappointed in the board's decision and will appeal it. It is important to note that the board recognizes that Mr. Mosbaugh's allegations have not been proven."

The U.S. Justice Department currently is conducting a criminal investigation into some of Mr. Mosbaugh's allegations.

His attorney, Michael Kohn, said he believes that investigation will be completed within six

“
Ultimately, it is the tape recordings that enabled Allen Mosbaugh to protect himself from accusations leveled against him by Georgia Power that he was responsible for the submission of false information to the NRC.

Michael Kohn,
Mosbaugh's attorney

months.

Mr. Mosbaugh was fired from Georgia Power after it was learned he was secretly taping conversations with employees after the March 1990 incident.

"Ultimately, it is the tape recordings that enabled Allen Mosbaugh to protect himself from accusations leveled against him by Georgia Power that he was responsible for the submission of false information to the NRC," Mr. Kohn said.

Thursday, Feb. 25, 1993



The Atlanta Journal
The Atlanta Constitution

...

LOCAL NEWS

F6 Thursday, February 25, 1993 ...

Whistleblower to air Plant Vogtle complaints

ASSOCIATED PRESS

Washington — A federal licensing board has agreed to hear the case of a whistleblower who claims he can prove that the management of Georgia Power Co.'s Plant Vogtle lacks the competence and integrity to operate a nuclear plant.

The decision by the Nuclear Regulatory Commission's Atomic Licensing and Safety Board stems from allegations by Allen L. Mosbaugh that Georgia Power managers lied to the NRC after a 1990 accident at the two-reactor plant near Waynesboro.

The allegations by Mr. Mosbaugh, a former senior manager at Plant Vogtle who was fired in September 1990, also are the subject of a federal criminal investigation, according to NRC documents.

Michael Kohn, Mr. Mosbaugh's attorney, said Wednes-

day the licensing board's decision to hear the evidence ultimately could affect the operation of two other nuclear plants in the Southern Co. system, Plant Hatch near Baxley and Farley Nuclear Plant near Dothan, Ala.

If the board accepts Mr. Mosbaugh's arguments in this case, Mr. Kohn said, "Georgia Power and Alabama Power are going to have to show the NRC they have replaced the management of their nuclear facilities with qualified, competent people of high integrity before they will be allowed to continue operating their plants."

Georgia Power spokesman Tal Wright said the company was disappointed in the board's decision and will appeal it to the NRC.

"It is important to note that the board recognizes that Mr. Mosbaugh's allegations have not been proven," Mr. Wright said.

Dothan Eagle

(Alabama, February 25, 1993)

Wiregrass/Nation

Farley could be affected by case involving Georgia plant

From Staff, Wire Reports

WASHINGTON — In a case which could also affect the Farley Nuclear Plant near Dothan, a federal licensing board has agreed to hear a whistleblower's evidence that management of Georgia Power's Plant Vogtle lacks competence and integrity to operate a nuclear plant.

The decision by the Nuclear Regulatory Commission's Atomic Licensing and Safety Board stems from allegations by Allen L. Mosbaugh that Georgia Power managers lied to the NRC after a 1990 accident at the two-reactor plant near Waynesboro.

The allegations by Mosbaugh, a former senior manager at Plant Vogtle who was fired in September 1990, also are the subject of a federal criminal investigation, according to NRC documents.

Michael Kahn, attorney for Mosbaugh, said Wednesday that the licensing board's decision to hear Mosbaugh's evidence ultimately could affect operation of the Farley Nuclear Plant near Dothan and Plant Hatch near Baxley, Ga., both part of the Southern Co.'s system.

If the board accepts Mosbaugh's arguments in this case, Kahn said, "Georgia Power and Alabama Power are going to have to show the NRC they have replaced the management of their nuclear facilities with qualified, competent people of high integrity before they will be allowed to continue operating their plants."

Georgia Power spokesman Tai

Wright said the company was disappointed in the board's decision and will appeal it to the NRC.

"It is important to note that the board recognizes that Mr. Mosbaugh's allegations have not been proven," Wright said.

The board's decision last week came in a case in which Georgia Power is seeking to transfer its operating license for Plant Vogtle to Southern Nuclear Operating Co., another Southern Co. subsidiary.

Because the license transfer would not result in a change in management of the plant, both the NRC staff and Georgia Power opposed Mosbaugh's intervention in the case, arguing that there were no new safety risks.

But the board disagreed, saying that Mosbaugh should not be deprived of his right to intervene "because the material safety deficiencies he has alleged may already be occurring."

The board said it found "an adequate basis" for Mosbaugh's claims that Southern Nuclear Operating Co. President R.P. McDonald "is lacking in character and competence and that Southern Nuclear lacks the integrity required of a licensee for the operation of a nuclear power plant."

If that contention is upheld, the board said, it might deny the license amendment or ask Southern Nuclear to make changes in operation or personnel.

Mosbaugh's most serious allegation is that Georgia Power officials lied to the NRC about the reliability of a crucial backup generator after the 1990 accident at Plant Vogtle.

The accident occurred when a truck hit a power pole and caused a 38-minute blackout, during which the water temperature of the reactor cooling system rose from 90 degrees to 116 degrees.

Mosbaugh claims in a petition filed with the U.S. Labor Department that he was demoted by Georgia Power after he complained about safety problems at the plant.

He contends he was fired when Georgia Power found out he had tape-recorded conversations with other employees at the plant.

Kahn said those tapes were turned over to the NRC and provide the basis for the criminal investigation now being conducted by a federal grand jury in Atlanta.

Mosbaugh's firing has been upheld by a Labor Department administrative law judge.

That ruling has been appealed to Labor Secretary Robert Reich.