

April 4, 1996

EA 96-054

Carolina Power & Light Company
ATTN: Mr. W. R. Campbell
Vice President
Brunswick Steam Electric Plant
Post Office Box 10429
Southport, North Carolina 28461

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report Nos. 50-325/96-03 and 50-324/96-03)

Dear Mr. Campbell:

This refers to the inspection conducted on February 5-9, 1996, at the Brunswick facility. The inspection included a review of the circumstances involving the failure to comply with the requirements of your Fitness-for-Duty Program during operation of your on-site drug testing facility. The results of the inspection were formally transmitted to you by letter dated March 7, 1996. A closed predecisional enforcement conference was conducted in the Region II office on March 21, 1996, to discuss the apparent violations, the root causes, and your corrective actions to preclude recurrence. A list of conference attendees, NRC slides, and a copy of your presentation materials are enclosed.

Based on the information developed during the inspection and the information you provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. Violation A, described in the Notice, involved two examples of failure to identify presumptive positive drug test results during on-site pre-screening operations. As a result of these failures, one individual with presumptive positive test results entered vital plant areas unescorted, and a second individual was authorized unescorted access for approximately one week although he did not actually enter a vital area. In the second case, the individual was subsequently confirmed to be positive for the use of illegal drugs and was permanently denied unescorted access. The root causes of Violation A were inattention to detail by contractor personnel and performance deficiencies of the laboratory manager.

Violation A represents a significant regulatory concern in that, in two instances, you failed to provide early detection of persons who potentially were not fit to perform duties within the protected area. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

220063

9604220251 960404
PDR ADOCK 05000324
Q PDR

11
IE01

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$50,000 is considered for a Severity Level III violation. Because your facility has been the subject of escalated enforcement actions within the last two years¹, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process described in Section VI.B.2 of the Enforcement Policy. Because you identified the violation during reviews of laboratory operations, the NRC determined that credit for the factor of *Identification* was appropriate. Your immediate corrective actions included revocation of site access for the two individuals upon discovery of the errors, performance of chemical screening retests, prompt reporting of the event to the NRC, and subsequent reassessment of the decision to grant site access for the individuals in accordance with approved procedures. Your additional corrective actions included: (1) suspension of your onsite laboratory operations promptly after identification of the second error; (2) a thorough investigation of laboratory operations including independent review of records; (3) independent audits by the contractor and your corporate staff; and (4) training of corporate Fitness-for-Duty and access authorization personnel, emphasizing the need for attention to detail in complying with procedural requirements. Based on these facts, the NRC determined that your actions were comprehensive and that credit was warranted for the factor of *Corrective Action*.

Therefore, to continue to encourage prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

Violation B in the enclosed Notice involves two cases where you failed to adequately respond where reasonable grounds existed to suspect that the urine specimens obtained were altered or substituted. In these cases, each specimen was determined by your onsite laboratory to have a specific gravity of less than 1.003, a value which 10 CFR 26, Appendix A, Section 2.4(f)(2) sets forth as a reason to believe that the individual may alter or substitute a specimen. 10 CFR 26, Appendix A, Sections 2.4(g)(16) and (17) require that urine specimens suspected of being altered or substituted be forwarded to a laboratory for testing and that a second specimen be obtained as soon as possible under direct observation.

At the predecisional enforcement conference, you denied the violation based on your assessment that low specific gravity did not, as an isolated factor, constitute sufficient reason to believe that the sample may have been altered

¹Severity Level III violations were issued on September 8, 1995 (EA 95-166) for a design control violation identified on August 10, 1995; and on November 20, 1995 (EA 95-228) for the failure of your design control program to ensure selection of suitable materials for the replacement of components in safety related residual heat removal valves in August 1995.

or substituted. You indicated that it has been the common and accepted practice at your facility, in cases of low specimen specific gravity which are not accompanied by any of the other factors delineated in 10 CFR 26, Appendix A, Section 2.4(f), to require prompt recollection of a specimen but not under direct observation.

In consideration of your position expressed at the conference, we noted that NUREG-1385, "Fitness for Duty in the Nuclear Power Industry: Responses to Implementation Questions," Section 4.7, provides clarifying guidance on this matter. The NUREG specifically addresses the question of whether collection personnel may exercise discretion when determining whether or not they have a reason to believe a sample may have been altered in a case where the specific gravity of the specimen is low. Although the NUREG acknowledges that low specific gravity accompanied by a plausible explanation would not normally cause one to believe that there has been an attempt to alter the specimen, collection personnel are expected to exercise prudent judgment and to observe the collection in questionable cases.

In the cases cited in Violation B, the NRC has concluded that you failed to demonstrate sufficient justification for concluding that the low specific gravity of the specimens did not constitute a reason to believe that the samples may have been altered or substituted. In particular, the specific gravity of the sample collected on January 15, 1996, was well below the specified limit; the specimen was obtained from an individual seeking initial site access who had not established a history of meeting Fitness-for-Duty requirements at your facilities; and you have provided no evidence that information was obtained to show a medical or physical reason for the low specific gravity. This individual subsequently tested positive for drug use. Although your written Fitness for Duty Program defined low specific gravity as constituting a reason to believe that a particular individual may alter or substitute the urine specimen, your program did not delineate allowable reasons to deviate from the standard practices described in 10 CFR Part 26 and did not have provisions to ensure that a conservative review of cases involving low specific gravity is conducted. Therefore, the failure to send the two specimens to the laboratory for further testing and the failure to collect additional specimens under direct observation has been categorized as a Severity Level IV violation.

At the predecisional enforcement conference, you provided information identified after completion of our inspection to correct the details of the January 10, 1996, example of Violation B as documented in paragraph 2.4 of Inspection Report Nos. 50-325/96-03 and 50-324/96-03. You stated that the Fitness-for-Duty Manager had been notified of the low specific gravity of this sample.

With regard to the apparent violation identified in Inspection Report Nos. 50-325/96-03 and 50-324/96-03 involving training of laboratory personnel, additional information identified after completion of our inspection and presented by you at the predecisional enforcement conference indicates that training of laboratory personnel was sufficient to meet regulatory

requirements. Therefore, the NRC has concluded that a violation did not occur.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Should you have any questions concerning this letter, please contact us.

Sincerely,

(Original signed by
S. D. Ebnetter)

Stewart D. Ebnetter
Regional Administrator

Docket No. 50-325 and 50-324
License No. DPR-71 and DPR-62

Enclosures: 1. Notice of Violation
2. List of Conference Attendees
3. NRC Slides
4. Licensee Presentation Handout

cc w/encls: See page 5

cc w/encls:

W. Levis, Director
Site Operations
Brunswick Steam Electric Plant
P. O. Box 10429
Southport, NC 28461

R. P. Lopriore
Plant Manager
Brunswick Steam Electric Plant
Carolina Power & Light Company
P. O. Box 10429
Southport, NC 28461

J. Cowan, Manager
Operations & Environmental
Support MS OHS7
Carolina Power & Light Company
P. O. Box 1551
Raleigh, NC 27602

W. D. Johnson, Vice President
and Senior Counsel
Carolina Power & Light Company
P. O. Box 1551
Raleigh, NC 27602

Dayne H. Brown, Director
Division of Radiation Protection
N. C. Department of Environmental
Commerce & Natural Resources
P. O. Box 27687
Raleigh, NC 27611-7687

Karen E. Long
Assistant Attorney General
State of North Carolina
P. O. Box 529
Raleigh, NC 27602

Robert P. Gruber
Executive Director
Public Staff - NCUC
P. O. Box 29520
Raleigh, NC 27626-0520

Public Service Commission
State of South Carolina
P. O. Box 11649
Columbia, SC 29211

Jerry W. Jones, Chairman
Brunswick County Board of
Commissioners
P. O. Box 249
Bolivia, NC 28422

Dan E. Summers
Emergency Management Coordinator
New Hanover County Department of
Emergency Management
P. O. Box 1525
Wilmington, NC 28402

Norman R. Holden, Mayor
City of Southport
201 East Moore Street
Southport, NC 28461

NRC Resident Inspector
U.S. Nuclear Regulatory Commission
8470 River Road, SE
Southport, NC 28461

Distribution w/encls:

PUBLIC
 JTaylor, EDO
 JMilhoan, DEDR
 SEbnetter, RII
 LChandler, OGC
 JGoldberg, OGC
 RZimmerman, NRR
 EJulian, SECY
 BKeeling, CA
 Enforcement Coordinators
 RI, RIII, RIV
 JLieberman, OE
 BSummers, OE (2)
 OE:EA File
 EHayden, OPA
 LTemper, OC
 GCaputo, OI
 EJordan, AEOD
 LNorton, OIG
 CEvans, RII
 BUryc, RII
 KClark, RII
 RTrojanowski, RII
 BMozarfari, NRR
 MShymlock, RII
 PFredrickson, RII (IFS Action Required)
 GHallstrom, RII
 IMS:RII

SEND TO PUBLIC DOCUMENT ROOM?								YES	NO
OFFICE	RII:DRS	RII:DRP	RII:DRP	RII:DRS	RII:EQS	RII:ORA	RII:ORA		
SIGNATURE	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		
NAME	Fredrickson	MShymlock	EMerschoth	AGibson	BUryc/OE	CEvans	LReyes		
DATE	04/21/96	04/21/96	04/21/96	04/21/96	04/21/96	4/02/96	04/21/96		
COPY?	(YES) NO	(YES) NO	(YES) NO	YES NO	YES NO	YES NO	YES NO		

OFFICIAL RECORD COPY DOCUMENT NAME: H:\196OPEN.ENF\96054BRU.DIR\final.rv2

SEND TO PUBLIC	
OFFICE	OE
SIGNATURE	<i>CRK</i>
NAME	JLieberman
DATE	04/3/96
COPY?	<input checked="" type="radio"/> YES <input type="radio"/> NO

*per telecon with
R. Rosano*