UNITED STATES
NUCLEAR REGULATORY COMMISSION
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ATLANTA, GEORGIA 30303

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In Reply Refer To:
RII:WJT
50-413/A, 50-414/A,
50-491/A, 50-492/A,
50-493/A, 50-488/A,
50-489/A, 50-490/A

Duke Power Company
Attn: Mr. L. C. Dail, Vice President
Design Engineering
Post Office Box 2178
Charlotte, North Carolina 28242

Gentlemen:

We have received permission to reproduce the attached articles which appeared in the June and August editions of the Nuclear Security Safeguards Newsletter. These articles provide further background information to the mutually significant issues of guard training and records falsification as discussed in IE Circular 78-17.

Sincerely,

J. Williams

W. B. Kenna, Branch Chief
Safeguards Branch

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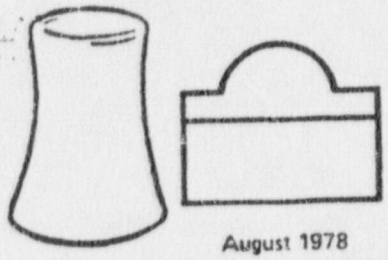

August 1978

NUCLEAR SECURITY SAFEGUARDS NEWSLETTER

Operational Systems Incorporated • 3140 N. Washington Boulevard • Arlington, VA 22201 • (703) 841-0930

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Federal Judge's Message

By Loren Evenson, Security Associate, OSI

In the June issue, we reported on the investigation and indictment of three Wisconsin Security Bureau employees for making false statements to NRC about security at a Dairyland Power Cooperative nuclear power plant. The two defendants who pleaded guilty were both given 20 day sentences on July 14, 1978, and action against the third defendant is still pending according to Frank M. Tuerkheimer, United States Attorney for the Western District of Wisconsin.

The imposition of the sentences was not an easy matter for United States District Judge James E. Doyle. In identically worded opinions for each defendant, Judge Doyle set out his reasoning:

"There is only one question to be resolved in approaching a sentencing decision in this case. The defendant is not in need of rehabilitation. Nor is any further sanction necessary to deter this particular man from similar misconduct in the future.

"The single question is whether a further sanction of some severity is necessary as a general deterrent, which means the imposition of a sanction upon one person in the hope that others who learn of his fate will be deterred from engaging in similar conduct.

"Is false reporting the kind of offense as to which the theory of general deterrence must be invoked, assuming that others will actually be deterred by what happens here? My answer is yes. The effective administration of many governmental programs depends upon obtaining information from those involved. Obviously, if the information provided is inaccurate, the governmental response may be skewed. In the present case, it appears that the discrepancy between the truth and the inaccurate information was probably of little practical significance. But it is clearly not acceptable that those bound to provide the information to the government should decide whether accuracy is important in a particular case. It is the administrators of the program who must make such a judgment.

"Is the importance of this particular program sufficient to require the invocation of general deterrence, again assuming its efficacy? My answer is yes. Indeed, security measures in the nuclear industry are a matter of grave importance.

(See "Judge" page 4)

Implementation of 73.55 Delayed

The 10 CFR 73.55 physical protection requirements for nuclear power plants were to be implemented by May 25, 1977 if they involved procedural measures and by August 24, 1978 if they involved use of equipment. On September 29, 1977, the NRC delayed the implementation of one procedural measure (physical search of employees) until August 24, 1978, claiming that it required more study. Now, as of August 7, 1978, the physical search and equipment requirements are delayed until February 23, 1979.

The rationale for delaying enforcement of the requirement is simply that licensees have indicated that they cannot comply by August 24. Licensees cited delays in receiving equipment, constructing facilities, and installing and testing equipment. The NRC delayed the pat-down search requirement again because it may be affected by NRC's pending decision on the proposed material access program, and, in any event, there is a "lack of urgency to require 'pat down' searches of employees." In light of this admission, NRC might be better off to listen to what the licensees have been saying all along: There is no need, let alone urgency, for conducting a pat down search of regular employees. If conditions change so radically in the future that there is an urgency for such searches, NRC could impose the requirement at that time based on the prevailing conditions.

...Judge... (Continued from page 1)

"Is it likely that the imposition of a sanction of some severity in this case will in fact deter others from similar conduct? This question cannot be answered by any objective standard. Courts must do their best to answer it in dealing with various kinds of offenses. In this case, the "audience" consists of those in the nuclear industry with responsibility for security precautions for today and for tomorrow, whether they be officials and employees of the Nuclear Regulatory Commission, or of Dairyland Power Cooperative and similar enterprises, or of companies engaged in providing security services. My best judgment is that there are persons in that audience who will be deterred by the knowledge that even persons like this defendant, who was near the bottom rung of the ladder of responsibility for security at the Genoa plant, received a sanction for falsification of a report.

"Is the punishment already suffered by this defendant sufficient to achieve general deterrence? My answer is that it should be, but it probably is not. I am aware that the defendant has already suffered grievously simply from the fact of conviction of a felony and the attendant publicity. But unless the court itself now imposes a sanction of some severity, I believe that the general deterrent effect will be muted and perhaps minimized.

"Is this theory of general deterrence fair? My answer is that it embodies a large quotient of unfairness as this case dramatically illustrates. But if general deterrence were abandoned as a permissible factor in sentencing, the effect nationally and over a period of decades would probably be profound and unfortunate for the community.

"Because of this defendant's excellent record over the years, I have decided upon a sentence which represents the absolute minimum which I consider necessary to send the message to those in government and in industry with responsibility for security in nuclear plants."

The message is clear: The Federal judiciary means business in lending its support to the NRC's security requirements. Once a decision is made to engage in NRC licensed activities, a commitment must be made to comply with all current and future regulations. And the licensee would be wise to institute internal controls to assure that those charged with compliance have in fact complied.

There is a double-edged reason for full compliance with nuclear security regulations. Nuclear security personnel are charged with upholding the law, and NRC regulations have the effect of law. Nuclear security personnel must not be placed in the position of having to violate laws, for to do so would expose them not only to the risk of Federal criminal charges, but also the destruction of their credibility. As onerous (or whatever other adjective is chosen) as some security regulations seem to be, licensees must either seek an exemption from NRC or fully comply. Full compliance usually requires the support of many diverse elements. Licensees must assure that the corporate security manager, plant security superintendent, or whoever is charged with compliance has the necessary support in the form of people, facilities, material, and money.

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June 1978

Two Plead Guilty To Conspiracy, False Statement

By Loren Evenson, Security Associate
Operational Systems Incorporated

Two former officials of a contract guard service have pleaded guilty to criminal charges stemming from representations they made or caused to be made to the NRC in regard to their furnishing trained security officers at a nuclear power plant.

The nuclear power plant was the LaCrosse Boiling Water Reactor, Genoa, Wisconsin, operated by the Dairyland Power Cooperative. The Physical Security Plan that Dairyland submitted as part of its NRC license stated that security personnel would be tested and requalified every six months in the use of firearms. To implement the Plan, Dairyland entered into a contract with the Wisconsin Security Bureau (WSB) which required WSB to furnish a guard force and specified the training each guard must undergo.

When NRC inspected the plant in February 1977, the inspectors found that the guards did not appear to have been trained in the use of firearms as specified in the plan. NRC issued a notice of non-compliance to Dairyland, which in turn notified WSB. WSB then provided Dairyland or NRC with at least five training records showing for the period in question that security personnel had been trained in firearms, with at least one security officer's time record showing that he had spent four hours at the firing range, and with a security officer who stated that he had received 72 hours of classroom training and 16 hours of firearms training before starting work at the plant.

When NRC inspectors examined the documents and interviewed the security officer, they found that the documents had been back dated and that the security officer was not telling the truth. NRC called a management meeting of appropriate officials, at which Dairyland disclaimed knowledge of the falsifications but WSB remained silent. Since Dairyland was then in compliance, having acquired a new contract guard service which provided trained security officers, Dairyland was required only to show how it would assure compliance in the future.

Thinking the matter was over, Dairyland was surprised some months later when NRC asked if it would cooperate in a Department of Justice inquiry into the incident. Dairyland did fully cooperate, and Justice concluded that it was not responsible. Justice did find the basis for a full FBI criminal investigation of the responsible WSB officials.

The results of the FBI investigation were provided to Frank M. Tuerkheimer, United States Attorney for the Western District of Wisconsin, and he presented the matter to a Federal Grand Jury sitting in Madison, Wisconsin. On May 24, 1978 the Grand Jury returned a five count indictment against three WSB officers.

- Count One: Defendants A and B and other co-conspirators violated 18 U.S.C. 371 (conspiracy) by conspiring to "defraud the United States by impairing, impeding, and obstructing the (NRC) in the performance of its functions" and "by making false and fictitious statements and representations about material facts in matters within the jurisdiction of the (NRC)." The parts of the conspiracy were the direction by the co-conspirators to Defendant A to prepare false firearms requalification forms, the preparation by Defendant A of the forms, the filing of the forms with Dairyland knowing that the forms would be made available to NRC, and the submission by Defendant B to NRC of a false payroll record.
- Count Two: Defendant A violated 18 U.S.C. 1001 (false statement) by filing four firearms requalification forms with Dairyland on March 1, 1977 that he knew to be false.
- Count Three: Defendant A violated 18 U.S.C. 1001 by filing one firearms requalification form with Dairyland on April 5, 1977 that he knew to be false.
- Count Four: Defendant B violated 18 U.S.C. 1001 by presenting NRC inspectors with a payroll form he knew to be false.
- Count Five: Defendant C violated 18 U.S.C. 1001 and 1002 by commanding and inducing a security officer to make statements to NRC inspectors that knew to be false.

On May 30, 1978 Defendant A pleaded guilty to Count Four and on June 2 Defendant B pleaded guilty to Count One. Defendant C pleaded not guilty to Count Five on June 5. The maximum penalty for each count is five years imprisonment, a $10,000 fine, or both.

These are the first such charges brought in connection with security at a nuclear power plant. They may not be the last. Security is a live issue, and the tendency of some utilities to shunt it to the side must be avoided. Utilities must take an active interest in the management of the security force and compliance with their security plan and NRC requirements. Thorough management audits, meetings with security officials, and personal inspection will assure the utility that the required security is in place or that the necessary changes are being made.

Nuclear Security Safeguards Newsletter is published monthly by Operational Systems Incorporated, 3140 North Washington Boulevard, Arlington, Virginia 22201. Address any comments, questions, suggestions, or articles to Mr. Thomas J. Tutko, Director, Nuclear Safeguards Department.