



CHAIRMAN

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

December 5, 1986

The Honorable Sam Gejdenson
United States House of Representatives
Washington, D. C. 20515

Dear Congressman Gejdenson:

This is in response to your October 28, 1986 request for information concerning the Commission's material false statement policy.

I am providing a list of all cases in which enforcement action has been taken by the Commission for material false statements. The list briefly describes the cases, whether the material false statements involved were written, oral or an omission, and the final NRC disposition of the case. Also enclosed is a list of cases involving potential material false statements that have been or are being investigated by the Office of Investigations and the disposition, if any, by the Department of Justice. Please note that a number of the cases are still pending before NRC or the Department of Justice and the public release of information about these cases may prejudice future investigative or enforcement actions. We ask that you provide appropriate protection for this information.

Four Staff papers ("SECY" papers) on material false statements already have been provided to you. We are forwarding additional documents which represent statements and proposals by individual Commissioners on this issue as well as comments submitted to the Commission by various Offices within the agency. Not all of these documents are publicly available; those which are not are identified by an asterisk on the index of documents. As the Commission has not yet made its final decision in this matter, public release of these documents could affect the agency's deliberative process. We ask that you also provide appropriate protection for this information.

The particular concern which you expressed in your letter was with the possibility that the Commission might limit the definition of material false statements to inaccurate written statements and sworn statements. I call to your attention the October 27, 1986 Memorandum from the Secretary of the Commission to the Executive Director for Operations and the General Counsel, in which the Commission directed the staff to prepare a proposed notice of rulemaking which includes some unsworn oral statements within the category of statements to be labeled material false statements.

Sincerely,

Lando W. Zech, Jr.

Enclosures:
As Stated

DOCUMENTS RELATED TO MATERIAL FALSE STATEMENTS

1. Summary of NRC Enforcement Actions re Material False Statements
- * 2. 4/6/82 - Memo for Comm. Ahearne and Comm. Roberts fm Samuel Chilk re Role of Material False Statements in the Enforcement Process
- * 3. 2/7/83 - Memo for Chairman Palladino, Comm. Gflinsky, Ahearne, Roberts and Asselstine fm Martin G. Malsch re Civil Penalties for Material False Statements -- Commission Authority and Policy
4. 4/16/84 - POLICY ISSUE/For The Commissioners fm William J. Dircks re Material False Statements - Policy Options (SECY-84-159)
5. 10/30/84 - Policy Issue/For The Commissioners fm William J. Dircks re Material False Statements (SECY-84-421)
6. 12/10/84 - Memo for Ch. Palladino, Comm. Roberts, Asselstine, Bernthal and Zech fm Ben B. Hayes re Material False Statements (SECY-84-421)
7. 12/10/84 - Memo for Ch. Palladino, Comm. Roberts, Asselstine, Bernthal and Zech fm Sharon R. Connelly re Material False Statements (SECY-84-421)
- ✓ * 8. 1/23/85 - Memo for Ch. Palladino, Comm. Roberts, Asselstine, Bernthal and Zech fm Herzel H. E. Plaine re Material False Statements -- OGC Comments on Staff's Proposal in SECY-84-421
- ✓ * 9. 2/7/85 - Memo for Ch. Palladino, Comm. Roberts, Asselstine, Bernthal and Zech fm William J. Dircks re Modification of the Staff's Proposal in SECY-84-421, Material False Statements
10. 3/4/85 - Memo for W. Dircks, and H. Plaine fm Samuel J. Chilk re Staff Requirements - Discussion of Material False Statements - Policy Options, 2:00 p.m., Monday, February 11, 1985, Commissioners' Conference Room, D. C. Office (Open to Public Attendance)
11. 4/26/85 - For The Commissioners fm W. J. Dircks re Material False Statements (SECY-85-149)
- ✓ * 12. 5/2/85 - Vote Sheet - SECY-85-149 MFS - Chairman Palladino

* Documents not publicly available.

- ✓ * 13. 5/2/85 - Vote Sheet - SECY-85-149 MFS - Commissioner Zech
- ✓ * 14. 5/9/85 - Vote Sheet - SECY-85-149 MFS - Commissioner Bernthal
- 15. 5/9/85 - Memo for W. Dircks & H. Plaine fm. S. J. Chilk re Staff Requirements - Discussion of Modified Rule on Material False Statements, 10:00 a.m., Thursday, May 2, 1985, Commissioners' Conference Room, D. C. Office (Open to Public Attendance)
- ✓ * 16. 5/10/85 - Vote Sheet - SECY-85-149 MFS - Commissioner Asselstine
- ✓ * 17. 5/10/85 - Vote Sheet - SECY-85-149 MFS - Commissioner Roberts
- ✓ * 18. 5/31/85 - Memo for William J. Dircks and Herzel H. E. Plaine fm Samuel J. Chilk re SECY-85-149 - Material False Statements
- 19. 1/30/86 - For the Comm's fm Stello re Material False Statements (SECY-86-36)
- * 20. 2/6/86 - Memo for Ch. Palladino, Comm. Roberts, Asselstine, Bernthal and Zech fm Alan S. Rosenthal re SECY-86-36 (Material False Statements)
- * 21. 2/11/86 - Memo for Ch. Palladino, Comm. Roberts, Asselstine, Bernthal and Zech fm Gary Edles re SECY-86-36 (MFS)
- ✓ * 22. 2/14/86 - Vote Sheet - SECY-86-36 MFS - Commissioner Roberts
- ✓ * 23. 2/14/86 - Vote Sheet - SECY-86-36 MFS - Commissioner Asselstine
- * 24. 2/19/86 - Vote Sheet - SECY-86-36 MFS - Commissioner Zech
- 25. 2/19/86 - Memo for Chrm. Palladino, Comrs. Roberts, Asselstine, Bernthal and Zech fm Ben B. Hayes re Material False Statements (SECY-86-36)
- * 26. 2/23/86 - Vote Sheet - SECY-86-36 MFS - Chairman Palladino
- ✓ * 27. 2/24/86 - Vote Sheet - SECY-86-36 MFS - Commissioner Bernthal
- 28. 2/25/86 - Memo to Victor Stello fm. S. J. Chilk re Staff Requirements - Discussion of Staff Recommendations on Enforcement Policy, 2:00 p.m., Wednesday, Feb. 12, 1986, Commissioners' Conference Room, D. C. Office (Open to Public Attendance)
- * 29. 5/21/86 - Memo to Comr. Roberts fm. V. Stello re: The Staff's Responses to Questions in Commissioner Zech's Notation Vote in Response Sheet on SECY 86-36

- ✓ * 30. 5/22/86 - To Commissioners fm Lando W. Zech re Material False Statement Proposal with 5/23/86 response from J. Asselstine
- * 31. 5/22/86 - To Commissioners fm Lando W. Zech re Material False Statement Proposal with 6/9/86 response from T. Roberts
- ✓ * 32. 6/25/86 - Memo for Secretary Samuel Chilk fm Frederick Bernthal re COMLZ-86-8: Material False Statements with 6/27/86 response from N. J. Palladino
- ✓ * 33. 6/30/86 - Memo for Ch. Palladino, Comm. Roberts, Asselstine, Bernthal and Zech fm V. Stello re Commissioner Bernthal's Proposal For Paragraph B of MFS Rule
- * 34. 7/25/86 - Memo to Chrm. Zech fm S. J. Chilk re: Material False Statement Proposal
- * 35. 9/22/86 - Memo to Various fm. W. Parler re: Telecon of September 22, 1986
- * 36. 9/24/86 - Memo to J. Gray, M. Cutchin, P. Davis, S. Burns fm S. Sohinki re Draft SRM on SECY 86-36 -- Material False Statements
- * 37. 9/24/86 - Memo to Ch. Zech, Comm. Roberts, Bernthal and Carr fm JAsselstine re SECY-86-36 - MFS
- ✓ * 38. 9/26/86 - Memo to Ch. Zech, Comm. Roberts, Bernthal and Carr fm J. K. Asselstine re SECY-86-36 - MFS
- ✓ * 39. 9/26/86 - Memo to Ch. Zech, Comm. Roberts, Bernthal and Carr fm JAsselstine re SECY-86-36 - MFS with 9/30/86 response from TRoberts
- ✓ * 40. 9/26/86 - Memo to Ch. Zech, Comm. Roberts, Bernthal and Carr fm J. Asselstine re SECY-86-36 MFS with 10/1/86 response from F. Bernthal
- * 41. 9/26/86 - Memo to Ch. Zech, Comm. Roberts, Bernthal and Carr fm JAsselstine re SECY-86-36 - MFS with 10/6/86 response from Lando Zech
- * 42. 9/26/86 - Memo to Ch. Zech, Comm. Roberts, Bernthal and Carr fm J. Asselstine re SECY-86-36 - MFS with response from K. Carr
- * 43. 10/7/86 - Memo to Ch. Zech, Comm. Roberts, Asselstine and Carr fm F. Bernthal re SECY-86-36 - Material False Statement Rule

- * 44. 10/9/86 - Memo to Comm. Roberts, Asselstine, Bernthal and Carr fm L. Zech re SECY-86-36 - Material False Statement Rule and Proposed Staff Requirements Memorandum
- * 45. 10/10/86 - Memo for W. Parler fm F. Bernthal re SECY 86-36 - MFS
- ✓ * 46. 10/14/86 - Vote Sheet - SECY-86-36 Material False Statements As Modified by Chairman Zech on October 9, 1986 - Commissioner Roberts
- ✓ * 47. 10/15/86 - Vote Sheet - SECY-86-36 Material False Statements As Modified by Chairman Zech on October 9, 1986 - Commissioner Asselstine
- ✓ * 48. 10/16/86 - Vote Sheet - SECY-86-36 Material False Statements As Modified by Chairman Zech on October 9, 1986 - Commissioner Carr
- ✓ * 49. 10/16/86 - Vote Sheet - SECY-86-36 Material False Statements As Modified by Chairman Zech on October 9, 1986 - Chairman Zech
- * 50. 10/20/86 - Memo for Comm. Bernthal fm W. C. Parler re Request for Views on Questions raised in October 7, 1986 Memorandum on MFS
- ✓ * 51. 10/20/86 - Memo to Comm Asselstine fr S. J. Chilk re COMJA-86-12 - SECY-86-36 Material False Statements
- ✓ * 52. 10/21/86 - Memo for V. Stello and W. Parler fm S. Chilk re SECY-86-36 - Material False Statements
- ✓ * 53. 10/23/86 - Memo to Secretary Chilk fm Bernthal re SECY-86-36 - MFS SRM
- * 54. 10/27/86 - Revised Memo for V. Stello and W. Parler fm S. Chilk re SECY-86-36 - Material False Statements

Yours
for the

Virginia Electric and Power Company - North Anna

After review of decisions of the Atomic Safety and Licensing Board and the Appeal Board concerning the license application for a nuclear facility, LBP-75-54, 2 NRC 498 (1975) and ALAB-324, 3 NRC 347 (April 15, 1976), the Commission ruled in CLI-76-22, 4 NRC 480 that VEPCO was liable for \$32,500 for seven material false statements, including written statements in the PSAR and a failure to provide certain geological reports to the Commission. The Commission's decision was upheld in Virginia Electric Power Company v. U.S.N.R.C., 571 F.2d 1289 (4th Cir. 1978).

Indiana and Michigan Electric Company - D.C. Cook, Unit 2

A civil penalty of \$10,000 was proposed for two written material false statements relating to an October 1977 letter on electrical penetrations from D.C. Cook to NRC. Penalty paid after proposal on May 30, 1978.

Consumers Power Company - Midland

An Order Modifying Construction Permits was issued on December 6, 1979 in part because of a material false statement in the FSAR dealing with the nature of the fill upon which Category I structures had been placed.

80-07 Alexandria Hospital

A civil penalty of \$2,100 was proposed of which \$1,500 was for two written material false statements made in a January 18, 1979 application for license renewal. The licensee falsely stated the number of cases participated in by an applicant physician and the number of physicians authorized to use radioactive materials. The civil penalties were imposed by Order on May 15, 1980 and paid on June 20, 1980.

81-08 Niagara Mohawk Power Corporation - Nine Mile Point

A civil penalty of \$225,000 was assessed of which \$5,000 was for a material false statement made in a written response on January 22, 1980 to an NRC Order of January 2, 1980 concerning items covered in NUREG-0578. The licensee indicated that certain plant modifications would be completed by a specific date. In fact, the

equipment had not been timely installed. The penalty was paid on March 24, 1981.

81-03 Indiana and Michigan Electric Company - D.C. Cook, Units 1 and 2

A civil penalty was proposed on December 30, 1981 for \$80,000 of which \$12,000 was assessed for three written material false statements made to the NRC in a report required to be submitted for assessment of the licensee's fire protection program. The penalty was mitigated for reasons not associated with the material false statements to \$52,000 on October 14, 1982 and the licensee paid the penalty on November 12, 1982.

81-63 Boston Edison Company - Pilgrim

A civil penalty was proposed on January 18, 1982 for \$550,000 of which \$250,000 was assessed for a written material false statement and subsequent failure to report noncompliance with 10 CFR 50.44. The licensee paid the penalty on March 19, 1982.

82-13 Pacific Gas & Electric Company - Diablo Canyon

A Notice of Violation was issued on February 11, 1982 for a material false statement made by PG&E representatives at a meeting with NRC personnel on November 3, 1981. The PG&E representatives orally asserted that they had not received drafts of the so-called Cloud report when in fact company officials had received such drafts. No civil penalty was assessed for this matter. CL1-82-1, 15 NRC 225 (1982).

82-46 Nebraska Public Power District - Cooper

A civil penalty of \$300,000 was proposed on August 9, 1982 for three oral and written material false statements and related noncompliance regarding the operability of the plant's emergency warning system. The penalty was mitigated to \$112,000 on February 18, 1983. It was determined that only one material false statement was made for which a \$100,000 civil penalty was imposed. A penalty of \$12,000 was imposed for failure to establish a prompt notification system. The licensee paid the penalty on March 16, 1983.

82-98 Arkansas Power and Light Company

A civil penalty of \$5,000 was proposed for a material false statement made on June 18, 1980 in a written response to IE Bulletin No. 86-06, concerning the completion of certain required testing. The penalty was paid after proposal on January 18, 1983.

83-47 American Testing Laboratories

In June 1983, an Order to Show Cause and Order Temporarily Suspending License was issued to the licensee based in part on oral material false statements willfully made by the laboratory manager to an NRC inspector during an inspection. The license was subsequently revoked in December 1983.

82-124 General Public Utilities - Three Mile Island, Units 1 and 2

Civil Penalties of \$100,000 were proposed in August 1983 for written material false statements associated with an August 3, 1979 letter to the Commission certifying a particular individual's satisfactory completion of an accelerated requalification program and with a November 15, 1979 application by the individual for renewal of his senior operator license. CLI-83-20, 18 NRC 1 (1983). The licensee subsequently paid the civil penalty on April 16, 1985.

83-88 Carolina Power and Light Co. - Brunswick, Units 1 & 2

A notice of violation was issued on January 10, 1984 for a material false statement made by the licensee in its written response to a previous NOV. The licensee stated that its list of equipment in the Plant Operating Manual had been revised to assure that the safety-related status of all equipment was correctly identified when, in fact, even six months later some equipment was still incorrectly listed as non-safety related.

Cleveland Electric Illuminating Co. - Perry, Units 1 & 2

A Notice of Violation was issued on March 28, 1984 to the applicant for material false statements in the form of an incomplete written response to staff questions and failure to correct staff's use of the response in the Final Environmental Statement. The statements concerned the applicant's use of herbicides and the potential impact of such use on a state-listed endangered species.

84-88 Pacific Gas & Electric Company - Diablo Canyon Unit 1

A Notice of Violation was issued on September 24, 1984, for a material false statement by omission due to the licensee's failure to disclose to the Licensing Board an audit of a contractor's quality assurance program at the time the Board was attempting to develop a record on quality assurance.

84-57 Virginia Electric Power Company - North Anna Units 1 & 2 and Surry Units 1 & 2

A Notice of Violation was issued on February 1, 1985 for material false statements made by the licensee in letters to the Commission. One statement concerned the operability of the reactor coolant system

head vents. In the second instance, the licensee's statement that the latest vendor information was contained in maintenance and testing procedures was found to be inaccurate.

84-63 Omaha Public Power District - Fort Calhoun Station

A Notice of Violation was issued on March 8, 1985 for a material false statement in a written response to IE Bulletin No. 82-02 concerning the use of lubricants on fasteners.

84-75 Mississippi Power & Light Company - Grand Gulf, Unit 1

A Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$125,000 was issued on March 21, 1984 for written material false statements and omissions of information in connection with the submission of proposed technical specifications which the licensee allegedly erroneously asserted represented the design and as built condition of the plant. On March 20, 1986 four violations were withdrawn and the civil penalty for the remaining violation was withdrawn because of the errors in the other citations.

85-04 Met Lab, Inc.

On May 15, 1985 an Order to Show Cause why its license should not be revoked was issued to the licensee for alleged written material false statements submitted in support of its contention that certain dosimetry response checks had been performed and that the violation did not occur. The Order was withdrawn on October 16, 1985 in response to actions taken by the licensee.

85-20 Mississippi Power and Light Co. - Grand Gulf, Unit 1

A Notice of Violation was issued on May 17, 1985 for a material false statement in a letter to the NRC concerning the licensee's review of circuits penetrating primary containment to correct discrepancies identified earlier.

84-23 Mississippi Power and Light Co. - Grand Gulf, Unit 1

On June 3, 1985, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$500,000 was issued for material false statements in and omissions of information from documents submitted in support of operator license applications. Final action in this matter is still pending before the Commission.

84-81 Commonwealth Edison - Bryon

A civil penalty of \$40,000 was proposed on December 5, 1984 for a written material false statement involving source inspections of

safety-related equipment. The civil penalty was paid on January 4, 1985.

85-34 Pittsburgh Testing Labs - Pittsburgh, PA

An Order was issued on May 24, 1985, removing a Radiation Safety Officer from licensed activities for oral and written material false statements to NRC inspectors concerning the use of unqualified radiographers and the performance of radiography at an unlicensed location. A total civil penalty of \$58,000 was issued on April 7, 1986, of which \$28,000 was also for the material false statement violations involving radiography. The civil penalty was imposed on June 2, 1986 and paid on June 24, 1986.

85-64 TVA - Watts Bar

A civil penalty of \$100,000 was proposed on August 29, 1985 for written material false statements involving the status of control room design modifications. The civil penalty was paid on September 27, 1985.

85-100 Nuclear Pharmacy, Inc. - Albuquerque, NM

A total civil penalty of \$68,000 was issued April 10, 1986, of which \$30,000 was for written and oral material false statements concerning the performance of required tests of radiopharmaceuticals and the administering of contaminated radiopharmaceuticals. The civil penalty was paid on May 9, 1986.