

**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) / PRIVACY  
ACT (PA) REQUEST**

99-076

7

RESPONSE  
TYPE☐ FINAL☒ PARTIAL

REQUESTER

Mr. Paul Gunter

DATE

MAR 24 1999

**PART I. -- INFORMATION RELEASED**

- ☐ No additional agency records subject to the request have been located.
- ☐ Requested records are available through another public distribution program. See Comments section.
- ☒ APPENDICES  
N Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- ☒ APPENDICES  
O Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- ☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- ☐ APPENDICES  
Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- ☒ We are continuing to process your request.
- ☐ See Comments.

**PART I.A -- FEES**

- AMOUNT \* ☐ You will be billed by NRC for the amount listed. ☐ None. Minimum fee threshold not met.
- \$ ☐ You will receive a refund for the amount listed. ☐ Fees waived.

\* See comments  
for details**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- ☐ No agency records subject to the request have been located.
- ☒ Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- ☒ This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

**PART I.C COMMENTS (Use attached Comments continuation page if required)**9904010037 990324  
PDR FOIA  
GUNTER99-76 PDR

FOIA/PA

SIGNATURE -- FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Russell A. Power

9904010037

NRC FORM 464 Part II (6-1998)	U.S. NUCLEAR REGULATORY COMMISSION	FOIA/PA	DATE
<b>RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST</b>		99-076	MAR 24 1999

**APPENDICES**  
**P**

**PART II.A -- APPLICABLE EXEMPTIONS**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- ☒ Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
- ☐ Sections 1-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be confidential business (proprietary) information.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- ☒ Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
- ☒ Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
- ☐ Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
- ☐ Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- ☐ Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☒ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
- ☒ (C) Disclosure would constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☐ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ OTHER (Specify)

**PART II.B -- DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Luis A. Reyes	Regional Administrator, Region II	Appendix P	<input checked="" type="checkbox"/>		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."



APPENDIX N  
RECORDS ALREADY AVAILABLE IN THE PDR

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	04/16/93	9304300030	Letter to M. Medford P. Fredrickson; re: Notice of Violation (NRC Inspection Report Nos. 50-259/93-07, 50-260/93-07 and 50- 296/93-07) w/enclosures (23 pages)
2.	01/27/97	9702110044	Letter to O. Kingsley from M. Lesser; re: Browns Ferry Nuclear Plant: Alleged Discrimination Against A former Stone & Webster Iron Worker (Office of Investigation Case Number 2-96-008) w/enclosure (5 pages)
3.	03/14/97	9704150280	Letter to O. Kingsley from J. Jaudon; re: Notice of Violation (NRC Office of Investigations Report No. 2-96-009) (7 pages)
4.	04/02/97	9704080152	Letter to J. Jaudon from R. Adney (3 pages)
5.	05/09/97	9705200050	Letter to O. Kingsley from J. Jaudon; re: NRC Office of Investigations (OI) Report No. 2-96-009 (4 pages)
6.	06/09/97	9706170028	Letter to Document Control Div. from R. Adney w/enclosure (6 pages)
7.	08/15/97	9708250374	Letter to O. Kingsley from J. Jaudon; re: NRC Office of Investigations (OI) Report No. 2-96-009 (3 pages)
8.	12/18/97	9712240224	Letter to J. Lieberman from J. Bailey (2 pages)
9.	12/29/97	9712310301	Letter to O. Zeringue from J. Lieberman (1 page)

**APPENDIX O**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	Undated	Draft letter to D. Smith from H. Miller, NRC Region, "Notice of Violation and Proposed Imposition of Civil Penalty" (OI Rpt No. 1-96-033) (8 pages)
2.	Undated	Draft letter to S. Kelly, "NRC Investigation Report 1-96-033" (3 pages)
3.	Undated	Index of Concerns; RII-1996-A-0063 (1 page)
4.	Undated	Allegation Report RII-96-A-0063 (1 page)
5.	Undated	Domestic Return Receipt w/attachment (2 pages)
6.	Undated	Domestic Return Receipt w/attachment (2 pages)
7.	Undated	EICS Enforcement Worksheet (4 pages)
8.	Undated	EICS Staff Notes (1 page)
9.	Undated	Handwritten Note (1 page)
10.	Undated	Handwritten Note (1 page)
11.	Undated	TVA Letter (1 page)
12.	Undated	EA Number Request Form (1 page)
13.	Undated	Case Chronology; RII-93-A-0096 (1 page)
14.	Undated	Handwritten Notes (1 page)
15.	Undated	Facsimile Transmittal (1 page)
16.	Undated	Handwritten Notes (1 page)
17.	Undated	Chronology (2 pages)
18.	Undated	TVA News Release (2 pages)
19.	Undated	Sequoyah Nuclear Plant (2 pages)



**APPENDIX O**  
**(continued)**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
20.	03/30/93	Letter to DOL from D. Harrison (2 pages)
21.	05/27/93	Allegation Review Panel; RII-93-A-0096 (1 page)
22.	05/27/93	Allegation Review Summary; RII-93-A-0096 (1 page)
23.	06/21/93	Master (1 page)
24.	07/01/93	Unnamed - Various attachments (5 pages)
25.	07/01/93	Fact Sheet for Discrimination Cases (2 pages)
26.	11/26/93	Note to D. Hinton from B. Uryc; re: Harrison v. Stone & Webster 93-ERA-44 (2 pages)
27.	11/26/93	TVA (1 page)
28.	06/01/94	Facsimile Transmittal w/attached 6/1/94 note to D. Hinton from B. Uryc (3 pages)
29.	11/08/94	Recommended Decision and Order (33 pages)
30.	01/04/95	Fact Sheet for Discrimination Cases (2 pages)
31.	05/16/95	Annotated memo to E. Merschoff from B. Uryc; re: OI Report No. 2-93-030, Browns Ferry Nuclear Plant; Alleged Demotion of Stone and Webster Engineering Corporation.. (RII-93-A-0096) (1 page)
32.	05/16/95	Annotated memo to E. Merschoff from B. Uryc; re: OI Report No. 2-93-030, Browns Ferry Nuclear Plant; Alleged Demotion of Stone and Webster Engineering Corporation (SWEC)...(1 page)
33.	05/16/95	Annotated memo to E. Merschoff from B. Uryc; re: OI Report No. 2-93-030, Browns Ferry Nuclear Plant; Alleged Demotion of Stone and Webster Engineering Corporation (SWEC)...(1 page)
34.	05/24/95	Fact Sheet for Discrimination Cases (2 pages)

**APPENDIX O**  
**(continued)**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
35.	05/25/95	Letter to A. Perry from B. Uryc; re: Request for Access to DOL Case File (no. 93-ERA-44) (2 pages)
36.	07/28/95	Case Chronology; RII-93-A-0096 (1 page)
37.	07/28/95	Allegation Management System; RII-93-A-0096 (1 page)
38.	07/28/95	Index of Concerns; RII-93-A-0096 (1 page)
39.	09/08/95	E-mail from A. Boland to Various Addressees; re: Harrison DOL Case (1 page)
40.	09/15/95	E-mail from N. Sanford to B. Uryc; re: Calendar Item (1 page)
41.	09/22/95	E-mail from A. Boland to Various Addressees; re: Harrison/BNF DOL Issues (1 page)
42.	10/06/95	E-mail from L. Watson to D. Rosano; re: Harrison Case (1 page)
43.	10/06/95	E-mail from L. Watson to M. Lesser; re: SWEC address for Browns Ferry (1 page)
44.	10/10/95	EA Number Request Form (1 page)
45.	10/18/95	Letter to S. Ehele from E. Merschoff; re: Predecisional Enforcement Conference w/enclosure (8 pages)
46.	10/18/95	Letter to O. Kingsley from E. Merschoff; re: Predecisional Enforcement Conference w/enclosure (7 pages)
47.	10/18/95	Letter to R. Kelly from E. Merschoff; re: Predecisional Enforcement Conference w/enclosure (7 pages)
48.	10/18/95	Letter to O. Kingsley from E. Merschoff; re: Predecisional Enforcement Conference w/enclosures (23 pages)
49.	10/25/95	EICS Staff Notes (2 pages)



APPENDIX O  
(continued)  
RECORDS BEING RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
50.	10/25/95	E-mail from M. Lesser to L. Watson; re: Attendees at Harrison Enf Conf (1 page)
51.	10/30/95	Handwritten Notes (3 pages)
52.	10/30/95	EICS Staff Notes (5 pages)
53.	11/01/95	E-mail from L. Watson to D. Rosano re: Harrison Case (1 page)
54.	11/07/95	E-mail from L. Watson to Various Addressees; re: Harrison Case (1 page)
55.	11/16/95	TVA Log Sheet (1 page)
56.	11/21/95	E-mail from L. Watson to Various Addressees; re: Proposed Enforcement on BF Discrimination (1 page)
57.	12/13/95	Handwritten Notes (1 page)
58.	12/18/95	Order Denying Application for Stay (5 pages)
59.	12/21/95	E-mail from A. Boland to Various Addresses (1 page)
60.	01/04/96	Facsimile Transmittal (1 page)
61.	01/04/96	Letter to E. Merschoff from M. Medford, re: Consideration of NRC Enforcement Action Regarding DOL Case No. 93-ERA-044 (3 pages)
62.	01/09/96	2-Way Memo to C. Evans (1 page)
63.	01/29/96	Handwritten Note (1 page)
64.	01/29/96	E-mail from B. Uryc to Various Addressees; re: EA 95-120 (1 page)
65.	02/08/96	E-mail from B. Uryc to D. Rosano; re: EA 95-220 (1 page)

**APPENDIX O**  
**(continued)**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
66.	02/14/96	E-mail from A. Boland to Various Addressees; re: Final Harrison Actions EA 95-190 and IA 96-005 (1 page)
67.	02/14/96	Letter to R. Kelly from S. Ebnetter; re: Notice of Violation (7 pages)
68.	02/14/96	Letter to S. Ehele from S. Ebnetter; re: Department of Labor Case No. 93-ERA-044 (2 pages)
69.	02/15/96	Facsimile Transmittal (1 page)
70.	02/15/96	News Release (1 page)
71.	03/07/96	ARB Meeting; RII-96-A-0038 (1 page)
72.	03/13/96	ARB Meeting (1 page)
73.	03/13/96	EICS Staff Notes (2 pages)
74.	04/30/96	Fact Sheet for Discrimination Cases (2 pages)
75.	05/21/96	Letter to A. Perry from B. Uryc; re: Request For Access to DOL Case File (3 pages)
76.	06/27/96	Facsimile Transmittal w/attached 6/27/96 note to J. Kaczak from B. Uryc (2 pages)
77.	08/13/96	DOL Document Processing Sheet (1 page)
78.	08/15/96	TVA Log Sheet (2 pages)
79.	10/02/96	Letter to G. Huddleton from L. Slack; re: Discriminatory Employment Practices Complaint, RII-96-A-0038 (1 page)
80.	10/07/96	Order of Dismissal (4 pages)
81.	10/07/96	DOL Document Processing Sheet (1 page)
82.	01/02/97	EICS Routing Sheet (4 pages)



**APPENDIX C**  
**(continued)**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
83.	01/06/97	EICS Staff Notes (1 page)
84.	01/22/97	Letter to G. Huddleton from O. DeMiranda; re: RII-96-A-0038 - Discriminatory Employment Practices w/enclosure (2 pages)
85.	01/22/97	Memo to M. Lesser from O. DeMiranda; re: Browns Ferry Nuclear Plant: Alleged Discrimination Against A Former Stone & Webster Iron Worker (Case No. 2-96-008/RII-96-A-0038) w/attachment (2 pages)
86.	01/22/97	Index of Concerns; RII-96-A-0038 (1 page)
87.	01/22/97	CHRON (1 page)
88.	02/11/97	Memo to J. Jaudon from B. Uryc; re: Office of Investigations Report No. 2-96-009 - Sequoyah Nuclear Plant (2 pages)
89.	02/17/97	Case Chronology; RII-1996-A-0063 (1 page)
90.	02/26/97	EICS Enforcement Worksheet (4 pages)
91.	04/08/97	EICS Staff Notes (2 pages)
92.	04/08/97	Transmit Conf. Report w/attachments (3 pages)
93.	04/08/97	Note to M. Satorious from B. Uryc; re: EA 97-092, OI Investigation Case No. 2-96-009 w/attachment (1 page)
94.	07/02/97	E-mail to B. Uryc from J. Lieberman w/attachment (2 pages)
95.	07/16/97	Memo to Docket File from M. Lesser; re: Typographical Error Notice of Violation (EA 95-220) (2 pages)
96.	07/30/97	PANEL (3 pages)
97.	08/01/97	E-mail from C. Evans to Various Addressees; re: Telecon with Ed Viglucci of TVA (1 page)
98.	08/14/97	Checklist (1 page)

APPENDIX O  
(continued)  
RECORDS BEING RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
99.	09/23/97	Action Item No. 97-134 (1 page)
100.	12/24/97	E-mail from A. Boland to Various Addressees; re: Acknowledgment letter in Harrison Case (1 page)



**APPENDIX P  
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	01/17/94	Letter to Individual from B. Uryc w/enclosure (3 pages) <b>EX. 7C</b>
2.	02/26/97	EICS Enforcement Worksheet (4 pages) <b>EX. 7C</b>
3.	05/13/95	Letter to Individual from O. DeMiranda (1 page) <b>EX. 7C</b>
4.	07/28/95	Letter to Individual from B. Uryc (1 page) <b>EX. 7C</b>
5.	07/28/95	Alleger Identification Sheet (1 page) <b>EX. 7C</b>
6.	09/28/95	EICS Staff Notes (3 pages) <b>EX. 2</b>
7.	10/30/95	EICS Staff Notes (2 pages) <b>EX. 5</b>
8.	01/03/96	Letter to E. Merschoff from R. Kelly; re: NRC Consideration of Enforcement Action...w/enclosures (12 pages) <b>EX. 7C</b>
9.	10/18/96	Letter to Individual from E. Merschoff; re: Predecisional Enforcement Conference w/enclosures (24 pages) <b>EX. 7C</b>



# Nuclear Information and Resource Service

1424 16th St. NW, Suite 404, Washington, DC 20036; 202-328-0002; fax: 202-482-2183; e-mail: nirsnet@igc.apc.org web: www.nirs.org

FOIA/PA REQUEST

Case No:

99-076

Date Rec'd:

12-23-98

Action Off:

Lead

Related Case:

December 21, 1998

Russel Powell, Chief  
FOIA-LPDR Branch  
Division of Freedom of Information and Publication Services  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dear Mr. Powell:

On behalf of Nuclear Information and Resource Service (NIRS), and pursuant to the Freedom of Information Act, 5 U.S.C. 552(b), et. seq., I hereby request that you make available copies of all documents in the U.S. Nuclear Regulatory Commission Office of Investigation's (OI) possession, which describe or discuss:

- 1) [Case Number 1-96-033] falsification of a surveillance test by a fire protection technician at Limerick Unit 1 and "substantiated" by OI on 2/19/97.
- 2) [Case Number 2-96-008] alleged continuing discrimination against former Stone & Webster ironworker for raising past concerns regarding fire watches at Browns Ferry Unit 1 and "unsubstantiated" by OI on 11/20/96.
- 3) [Case Number 2-96-009] alleged falsification of fire watch journals at Sequoyah 2 and "unsubstantiated" by OI on 01/24/97.
- 4) [Case Number 4-97-003] failure to conduct fire watch rounds and falsification of fire watch logs at River Bend and "substantiated" by OI on 04/11/97.
- 5) [Case Number 4-97-027] falsification of Thermo-Lag material inspection records at Comanche Peak Unit 1 and "unsubstantiated" by OI on 09/18/97.
- 6) [Case Number 1-95-012] potential falsification of fire protection records at Fitzpatrick and deemed "Higher Priority" by OI on 05/30/95.
- 7) [Case Number 2-93-030] alleged demotion of Stone and Webster general foreman for expressing fire protection concerns at Browns Ferry Unit 1 and "unsubstantiated" by OI on 12/15/94.
- 8) [Case Number 3-93-001] alleged employment discrimination against an employee for his refusal to falsify records at Thermal Science, Inc., manufacturer of Thermo-Lag fire barriers, where resolution of the OI



- investigation is identified as "Other" and no referral was made to the Department of Justice by the OI as dated 03/30/95.
- 9) [Case Number 3-94-059] alleged deliberate falsification of fire watch records at Cook Unit 1 and deemed "Higher Priority" by OI on 01/18/95.
  - 10) [Case Number 3-94-060] alleged deliberate falsification of fire watch round records at Quad Cities Unit 1 and deemed "Higher Priority" by OI on 10/25/95.
  - 11) [Case Number 4-95-013] alleged deliberate falsification of fire watch records at Arkansas Nuclear One Unit 1 and "substantiated" by OI on 05/25/95.
  - 12) [Case Number 3-96-032] falsification of fire watch logs at Cook Unit 1 and determined by a "lack of regulatory requirement" by OI on 09/30/96.
  - 13) [Case Number 4-95-004] alleged discrimination and termination for refusal to falsify work steps (fire protection seals) at Arkansas Nuclear One Unit 1 and determined as a "lack of regulatory requirement" by OI on 02/26/96.
  - 14) [Case Number 4-95-032] alleged false statements by fire watches to NRC inspectors at Washington Nuclear Unit 2 and deemed "Higher Priority" by OI on 10/05/95.
  - 15) [Case Number 4-95-035] alleged deliberate falsification of fire watch records at Waterford Unit 3 and deemed "Higher Priority" by OI on 01/17/96.
  - 16) [Case Number 4-95-044] alleged deliberate falsification of fire watch records at Waterford Unit 3 and "substantiated" by OI on 02/08/96.
  - 17) [Case Number 4-95-047] alleged discrimination for reporting fire watch concerns to site management at Waterford 3 and "unsubstantiated" by OI on 01/31/96.
  - 18) [Case Number 4-95-070] alleged discrimination against fire watch for refusing to violate site security procedures at Waterford Unit 3 and "unsubstantiated" by OI on 04/03/96.

This request covers but is not limited to all draft and final reports, correspondence, memoranda, notes, records of telephone contacts, electronic communications including fax transmissions and Email, or other written records, whether in paper or computer files.

Pursuant to this request, please provide all documents and communications prepared or utilized by, in the possession of, or routed through the NRC related to items 1-18.

For any portion of the request that you deem appropriate to deny, NIRS requests that you describe the information that is denied, identify the exception to the FOIA on which you rely, and explain how that exception applies to the withheld information.

Pursuant to NRC regulations at 10 CFR 9.41, NIRS requests that any searching and copying fees incurred as a result of this search be waived, and provides the following information in response to the eight criteria listed in Section 9.41(b):

**1) Purpose of request:**

The purpose of the request is to gather information on the long-term reliance of compensatory measures, specifically hourly roving fire watch personnel, for inoperable fire barriers currently deployed throughout the nuclear power industry. This information is currently not available in the NRC's Public Document Room.

**2) Extent to which NIRS will extract and analyze the substantive content of the records:**

NIRS is qualified to make use of the requested information. The staff has demonstrated the ability to accurately interpret information and communicate that information in a form comprehensible to the general public. Members of the NIRS staff have published articles in such national journals as The Progressive, Nuclear Times, Newsday and Bulletin of Atomic Scientists. NIRS is quoted as a reliable source of information on nuclear safety issues in newspapers across the country, including the New York Times, The Washington Post, and The San Francisco Chronicle.

NIRS has a working relationship with attorneys, physicists, nuclear engineers, industry fire protection consultants, Congress and other respected professionals who contribute to the full understanding of technical records, investigations and the public health and safety impact.

**3) Nature of the specific activity or research in which the records will be used and NIRS's qualifications to utilize the information for the intended use in such a way that it will contribute to public understanding:**

NIRS seeks the requested information solely to contribute to and help shape the public debate on adequate fire protection at nuclear power stations and the public health and safety. NIRS intends to use the information in order to advance these concerns for the public's understanding, health and safety.

**4) Likely impact on the public's understanding of the subject as compared to the level of understanding of the subject prior to disclosure:**

NIRS seeks to translate the requested information into the layperson's understanding of fire protection issues at nuclear power stations. The added attention will increase the public understanding and further a national debate on fire protection standards.

**5) Size and nature of the public to whose understanding a contribution will be made:**

NIRS has an active subscribing membership of over 1500 throughout the United States. Several thousand additional members periodically receive mailings from NIRS.

NIRS provides resource material to electronic and print media outlets with very broad outreach to a safety conscious audience. Additionally, NIRS has a web site ([www.nirsnet.org](http://www.nirsnet.org)) which receives on average of 250-300 visitors per day where postings on this issue will be made available.

6) **Means of distribution of the requested information:**

NIRS will use its own newsletter publication The Nuclear Monitor and our media contacts in both the electronic and print media outlets to provide very broad outreach to the safety conscious public. Additionally, NIRS will post information on its web site ([www.nirsnet.org](http://www.nirsnet.org)) which receives on average of 250-300 visitors per day.

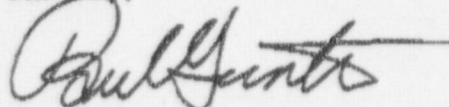
7) **Whether free access to information will be provided:**

NIRS will provide the information without charge to all members of the public. Information prepared from the FOIA requested will be posted on the web site for downloading free of charge. NIRS will also provide information to traditional media outlets without charge.

8) **No commercial interest by NIRS or any other party:**

NIRS has no commercial interest in obtaining the requested information. This information is provided to all public requests without charge. The sole interest of NIRS is to promote a policy debate on appropriate and adequate fire protection at nuclear power stations for the sake of public health and safety.

Sincerely,



Paul Gunter, Director  
Reactor Watchdog Project  
Nuclear Information and Resource Service

Cc:

Congressman Edward Markey  
Mr. David Walker, GAO



EAs 97-050  
97-115

Mr. D. M. Smith, President  
PECO Nuclear  
Nuclear Group Headquarters  
Correspondence Control Desk  
Post Office Box 195  
Wayne, Pennsylvania 19087-0195

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL  
PENALTY - \$80,000  
(NRC Office of Investigation Reports Nos. 1-96-006 and 1-96-033)

Dear Mr. Smith:

This letter refers to two NRC investigations conducted by the NRC Office of Investigations (OI). The investigations were conducted after you had identified and investigated instances of record falsification at Limerick, and reported your findings to the NRC. The synopses of the OI investigations were forwarded to you with the NRC letter, dated, April 29, 1997. Based on the investigations conducted by your staff and OI, the NRC has concluded that records were, in fact, falsified at the facility. Falsification of records required to be maintained by NRC regulations or license conditions constitutes an apparent violation of 10 CFR 50.9, as also noted in the NRC April 29, 1997 letter. As a result, a predecisional enforcement conference was conducted with Mr. G. Rainey and other members of your staff on June 2, 1997, to discuss the violation, its causes, and your corrective actions.

Based on the information developed during the investigations, and the information provided during the June 2, 1997, conference, violations of NRC requirements are being cited. The violations are described in detail in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). The violations involve instances of records falsification at Limerick. In one case, a chemistry technician and a former chemist, at the direction of the former Primary Chemistry Manager, deliberately falsified a record of the time a grab sample was taken from the Reactor Enclosure Cooling Water (RECW) system. The Primary Chemistry Manager also pressured the technician and chemist to lie about their actions to your security personnel investigating the matter. In another case, a fire protection technical assistant deliberately failed to perform a fire hose station visual inspection surveillance test, yet falsified the surveillance test document to indicate the test was performed.

With respect to the first violation (OI Report 1-96-006), the technical specifications require that with a radiation monitor inoperable, at least one grab sample needs to be taken at least once every 24 hours. On February 7, 1996, the sample was approximately 1 hour and 15 minutes late, yet the record was changed to indicate that the sample was taken within the 24 hour period. Further, the investigation, in addition to confirming falsification of the sample documentation, also concluded there was a conspiracy and subsequent coercion of the chemistry technician by the Primary Chemistry Manager in an attempt to cover up the late sample.

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With respect to the second violation (OI Report 1-96-033), a fire protection technical assistant deliberately failed to properly perform a fire hose station visual inspection surveillance test and falsified the surveillance test document. Your investigation found that: (1) the individual deliberately failed to do the test in question, yet falsified the document; and (2) the individual deliberately failed to perform other such tests, yet falsified the related documentation on five other occasions; and (3) the individual failed to enter a specific area necessary to complete a fire suppression water system spray and sprinkler visual inspection for which he had signed documentation indicating that the visual inspection had been successfully completed.

Not performing required activities, yet documenting on records that the activities were performed, constitutes a significant regulatory concern. The NRC has previously issued documents emphasizing the importance of maintaining complete and accurate records of activities performed, such as in NRC Information Notice 92-30 issued on April 23, 1992, and NRC Generic Letter 93-03 issued on October 20, 1993. Those documents describe similar occurrences at other facilities. While the NRC is clearly concerned with the individuals who engage in these activities at Limerick, the NRC is also concerned whether the situation involving the Primary Chemistry Manager is evidence of a culture at Limerick in which the staff is fearful of raising problems when they occur.

Even though the RECW sample was not contaminated, and all affected fire protection equipment was operable, the NRC considers record falsification a significant regulatory concern. Given the number of record falsifications and given that the RECW record falsification was directed by the former Chemistry Manager, a licensee official, who subsequently coerced subordinates to lie to PECO investigators regarding this matter, the violations are categorized in the aggregate as a Severity Level II problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy in effect at the time these violations occurred, a base civil penalty in the amount of \$80,000 is considered for a Severity Level II problem. Since this issue constitutes a Severity Level II problem, the NRC would normally consider whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit would normally be warranted for both factors because you identified both violations and your corrective actions were considered prompt and comprehensive. Those corrective actions included: (1) taking disciplinary action against responsible individuals; (2) verifying that there was not a more widespread integrity issue within the chemistry and fire protection departments; (3) conducting a meeting with chemistry personnel during which integrity expectations were communicated to staff; (4) reinforcing expectations within the Fire Protection group; (5) briefing the Site Directors regarding the events; and (6) issuing a letter from the Vice President to all site personnel with reinforcement of expectations during the group meetings. However, notwithstanding the normal civil penalty assessment outcome, in accordance with Section VII.A.1 of the Enforcement Policy, civil penalties are normally proposed for Severity Level II problems and for willful violations to ensure that enforcement actions reflect the significance of the circumstances.

Therefore, to emphasize the importance of performing activities as required, and maintaining accurate records of such activities, and holding staff accountable to these standards, I have been authorized, after consultation with the Director, Office of Enforcement and the Deputy Executive

Director for Regulatory Effectiveness, to exercise enforcement discretion in accordance with Section VII.A.1 of the Enforcement Policy and issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$80,000 for the Severity Level II problem.

The NRC is treating the failure to take the necessary grab sample as a Non-Cited Violation in accordance with Section VII.B.1 of the Enforcement Policy.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. Given your staff's efforts to avoid documenting that the grab sample was late, your response should describe what actions you intend to take in light of this matter, to ensure that employees are comfortable properly dispositioning issues when errors are identified. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with 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).

Sincerely,

Hubert J. Miller  
Regional Administrator

Docket Nos. 50-352; 50-353  
License Nos. NPF-39; NPF-85

Enclosure: Notice of Violation and Proposed Imposition of  
Civil Penalty



cc w/encl:

G. Hunger, Jr., Chairman, Nuclear Review Board and Director - Licensing

W. MacFarland, Vice President - Limerick Generating Station

J. Kantner, Manager, Experience Assessment

Secretary, Nuclear Committee of the Board

Commonwealth of Pennsylvania

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RI, RII, RIII, RIV

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GCaputo, OI

DBangart, OSP

HBell, OIG

DRoss, AEOD

OE:Chron

OE:EA

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DScenci, PAO-RI

NSheehan, PAO-RI

Nuclear Safety Information Center (NSIC)

NRC Resident Inspector - Limerick

LTremper, OC

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OFFICE	RI:ORA	RI:DRP	RI:RC	RI:RA
NAME	DHolody/mjc	WHehl	BFewell	HMiller
DATE	/ /97	/ /97	/ /97	/ /97

OFFICE	OE	DEDO
NAME	JLieberman	EJordan
DATE	/ /97	/ /97

ENCLOSURE

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

PECO Energy Company

Docket Nos. 50-352;

50-

353

Limerick Units 1 & 2

License Nos. NPF-39;

NPF

-85

EA Nos. 97-050; 97-115

As a result of investigations conducted by the NRC Office of Investigations, and PECO Energy Company, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

10 CFR 50.9 requires, in part, that information required by the Commission's regulations or license conditions to be maintained by the licensee shall be complete and accurate in all material respects.

Technical Specification (TS) 6.10.2.d requires, in part, that records of surveillance activities required by TSs be retained for at least 5 years.

1. Contrary to the above, a record of a TS surveillance activity required to be maintained by the licensee at Limerick, was not complete and accurate in all material respects. Specifically, on February 7, 1996, while a Reactor Enclosure Cooling Water (RECW) radiation monitor was inoperable, the licensee was required, in accordance with TS 3.3.7.1, ACTION 72, to obtain and analyze at least one grab sample from the RECW system at least once per 24 hours. On that date, the sample needed to be taken by 11:00 a.m. to meet that requirement. Although the sample was not taken until 12:15 p.m. on that date (approximately 1 hour and 15 minutes after the time it was due), the record of the RECW Surveillance Test (ST-5-026-570-1, "Inop Reactor Enclosure Cooling Water Rad Mon Grab Sampling and Analysis"), signed by a chemistry technician and the chemist (as chemistry supervision), was inaccurate because: (1) page one of attachment 1 of the test record indicated that the time of the sample was 11:00 a.m., and (2) the attached computer

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printout of the Gamma Spectrum Analysis (required by step 4.3.1 of the surveillance test) also indicated that the sample was taken at 11:00 a.m.. This record was material because it provides evidence as to whether the licensee met the grab sample requirement.

2. Contrary to the above, certain surveillance records required to be maintained by the licensee at Limerick, were not complete and accurate in all material respects. Specifically, on three occasions between April 3, 1995 and June 28, 1995, the records for fire protection surveillance tests required by TS 4.7.6.2.c and TS 4.7.6.5.a were not accurate in that certain fire hose and sprinkler system inspections were recorded as having been completed, even though plant security data indicates that the technician was not present in the vicinity of the equipment to perform the inspection. These records were material because they provide evidence as to whether the licensee met the fire protection surveillance requirements.

This is a Severity Level II problem. (Supplement VII)  
Civil Penalty - \$80,000

Pursuant to the provisions of 10 CFR 2.201, PECO Energy Company (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the receipt of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or may protest imposition of the civil penalty, in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part,

(2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due that subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2728, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, and a copy to the NRC Senior Resident Inspector at the facility that is the subject of this Notice.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated at King of Prussia, Pennsylvania  
this      day of June 1997