

RAS 3177

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 06/29/01

SERVED 06/29/01

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

In the Matter of

DUKE COGEMA STONE & WEBSTER
(Savannah River Mixed Oxide Fuel
Fabrication Facility)

Docket No. 070-03098-ML

ASLBP No. 01-790-01-ML

June 29, 2001

MEMORANDUM

For the information of the parties, attached to this memorandum are copies of the civil/criminal authorities referenced in the affidavit of nondisclosure accompanying the Licensing Board's June 29, 2001 protective order. The United States Code provisions, other federal statutes, and federal cases can be found on the Government Printing Office website, located at www.access.gpo.gov/uscode, and the Library of Congress website, located at www.lcweb2.loc.gov/law/GLINv1/GLIN.htm.

FOR THE ATOMIC SAFETY AND LICENSING BOARD

/RA/

Thomas S. Moore
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 29, 2001

§70.91 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of --

- (1) The Atomic Energy Act of 1954, as amended;
- (2) Title II of the Energy Reorganization Act of 1974, as amended; or
- (3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of --

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

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[Laws in effect as of January 6, 1999]
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[CITE: 42USC2273]

TITLE 42--THE PUBLIC HEALTH AND WELFARE

CHAPTER 23--DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

Division A--Atomic Energy

SUBCHAPTER XVII--ENFORCEMENT OF CHAPTER

Sec. 2273. Violation of sections

(a) Generally

Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this chapter for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under section 2095 or 2201(b), (i), or (o) of this title shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than twenty years, or both.

(b) Construction or supply of components for utilization facilities; impairment of basic components; ``basic component'' defined; posting at construction sites of utilization facilities and on premises of component fabrication plants

Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 2133 or 2134(b) of this title who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this chapter, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than \$50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term ``basic component'' means a facility structure, system, component or part thereof necessary to assure--

- (1) the integrity of the reactor coolant pressure boundary,
- (2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or
- (3) the capability to prevent or mitigate the consequences of

accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 2133 or 2134(b) of this title is under construction and on the premises of each plant where components for such a facility are fabricated.

(c) Criminal penalties

Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 2210(d) of this title (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this chapter or any applicable nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in section 2014(q) of this title shall, upon conviction, notwithstanding section 3571 of title 18, be subject to a fine of not more than \$25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, notwithstanding section 3571 of title 18, punishment shall be a fine of not more than \$50,000, or imprisonment for not more than five years, or both.

(Aug. 1, 1946, ch. 724, title I, Sec. 223, as added Aug. 30, 1954, ch. 1073, Sec. 1, 68 Stat. 958; amended Pub. L. 90-190, Sec. 12, Dec. 14, 1967, 81 Stat. 578; Pub. L. 91-161, Sec. 6, Dec. 24, 1969, 83 Stat. 445; Pub. L. 96-295, title II, Sec. 203, June 30, 1980, 94 Stat. 786; Pub. L. 100-408, Sec. 18, Aug. 20, 1988, 102 Stat. 1083; renumbered title I, Pub. L. 102-486, title IX, Sec. 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

Amendments

1988--Subsec. (c). Pub. L. 100-408 added subsec. (c).
1980--Pub. L. 96-295 designated existing provisions as subsec. (a) and added subsec. (b).
1969--Pub. L. 91-161 limited application of section to instances where no criminal penalties have been provided.
1967--Pub. L. 90-190 substituted `` (o) '' for `` (p) ''.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100-408 effective Aug. 20, 1988, but inapplicable to any violation occurring before Aug. 20, 1988, see section 20 of Pub. L. 100-408, set out as a note under section 2014 of this title.

Transfer of Functions

Atomic Energy Commission abolished and functions transferred by

sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

Cross References

Conspiracy to commit offense, see section 371 of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offense described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 6105 of Title 38, Veterans' Benefits.

Section Referred to in Other Sections

This section is referred to in sections 2167, 2168 of this title; title 5 section 8312; title 38 section 6105.

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[CITE: 42USC2282]

TITLE 42--THE PUBLIC HEALTH AND WELFARE

CHAPTER 23--DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

Division A--Atomic Energy

SUBCHAPTER XVII--ENFORCEMENT OF CHAPTER

Sec. 2282. Civil penalties

(a) Violations of licensing requirements

Any person who (1) violates any licensing or certification provision of section 2073, 2077, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, 2139, or 2297f of this title or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or certification issued thereunder, or (2) commits any violation for which a license may be revoked under section 2236 of this title, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed \$100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.

(b) Notice

Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to

pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.

(c) Collection of penalties

On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

(Aug. 1, 1946, ch. 724, title I, Sec. 234, as added Pub. L. 91-161, Sec. 4, Dec. 24, 1969, 83 Stat. 444; amended Pub. L. 96-295, title II, Sec. 206, June 30, 1980, 94 Stat. 787; renumbered title I, Pub. L. 102-486, title IX, Sec. 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 104-134, title III, Sec. 3116(d), Apr. 26, 1996, 110 Stat. 1321-350.)

Amendments

1996--Subsec. (a). Pub. L. 104-134, in first sentence, substituted ``any licensing or certification provision of section 2073, 2077, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, 2139, or 2297f of this title''

for ``any licensing provision of section 2073, 2077, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, or 2139 of this title'' and ``any license or certification issued thereunder'' for ``any license issued thereunder''.

1980--Subsec. (a). Pub. L. 96-295 substituted \$100,000 penalty limitation per violation for \$5,000 limit per violation and \$25,000 limit for all violations taking place within any thirty consecutive day period.

Transfer of Functions

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

Section Referred to in Other Sections

This section is referred to in sections 2114, 2167, 2168, 5846 of this title.

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[CITE: 18USC1832]

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 90--PROTECTION OF TRADE SECRETS

Sec. 1832. Theft of trade secrets

(a) Whoever, with intent to convert a trade secret, that is related to or included in a product that is produced for or placed in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly--

(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information;

(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information;

(3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in paragraphs (1) through (3); or

(5) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined under this title or imprisoned not more than 10 years, or both.

(b) Any organization that commits any offense described in subsection (a) shall be fined not more than \$5,000,000.

(Added Pub. L. 104-294, title I, Sec. 101(a), Oct. 11, 1996, 110 Stat. 3489.)

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[Document not affected by Public Laws enacted between
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[CITE: 18USC1835]

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 90--PROTECTION OF TRADE SECRETS

Sec. 1835. Orders to preserve confidentiality

In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of trade secrets, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of any trade secret.

(Added Pub. L. 104-294, title I, Sec. 101(a), Oct. 11, 1996, 110 Stat. 3490.)

References in Text

The Federal Rules of Criminal Procedure, referred to in text, are set out in the Appendix to this title.

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Evidence, referred to in text, are set out in the Appendix to Title 28.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
DUKE COGEMA STONE & WEBSTER)	Docket No. 70-3098-ML
)	
(Savannah River Mixed Oxide Fuel)	
Fabrication Facility))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM, DATED 06/29/01 have been served upon the following persons by U.S. mail, first class, as indicated by an asterisk (*) or through the Nuclear Regulatory Commission's internal distribution as indicated by double asterisks (**), with copies by electronic mail or fax as indicated.

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Docket No. 70-3098-ML
LB MEMORANDUM, DATED 06/29/01

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of June 2001