

October 22, 2001

EAs 00-277 and 01-013

Dr. Richard L. Wallace, Chancellor
University of Missouri-Columbia
105 Jesse Hall
Columbia, MO 65211

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,000 (OFFICE OF INVESTIGATIONS REPORT NO. 4-2000-030S) -
UNIVERSITY OF MISSOURI-COLUMBIA RESEARCH REACTOR (MURR)

Dear Dr. Wallace:

This letter refers to the investigation (No. 4-2000-030S) conducted by the NRC Office of Investigations (OI) initiated on January 24, 2001, and concluded on April 17, 2001, of an apparent violation of Nuclear Regulatory Commission (NRC) requirements in 10 CFR 50.7 prohibiting discrimination against employees who engage in protected activities at the University of Missouri-Columbia (UMC) Research Reactor. The factual summary of the investigation was provided to UMC by letter dated June 11, 2001, and a closed, transcribed, predecisional enforcement conference was held in Columbia, Missouri on July 23, 2001.

In addition, as a result of a separate investigation initiated on May 15, 2000, and concluded on October 24, 2000 (No. 4-2000-029), OI concluded that MURR management created a potential chilling effect on employees reporting safety concerns. The synopsis of this investigation was provided to UMC by letter dated March 5, 2001, which required UMC to submit a response to NRC containing an assessment of the freedom of MURR employees to report problems without fear of retaliation and an assessment of the continuing effectiveness of corrective actions taken to address the past chilling effect at the reactor facility. UMC responded to the NRC's March 5, 2001, letter by letters dated July 27 and August 10, 2001. The July 27, 2001, letter transmitted reports prepared by MURR's consultants which contained the assessments requested by NRC. The August 10, 2001, letter transmitted an action plan for enhancing the safety conscious work environment at MURR.

Based on the information developed during OI Investigation No. 4-2000-030S and the information UMC provided during the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding it are described in the previously provided summary of the OI investigation report.

The violation involves a former MURR senior research scientist who, in a letter to the University Provost dated May 24, 1999, described a discussion he had with a Department of Energy (DOE) official. In that letter, the senior research scientist discussed what he interpreted as a DOE concern regarding the level of commercial activity at the MURR. As a result of writing this

letter to the Provost, the senior research scientist was given an oral warning, as documented in a memorandum dated July 7, 1999, from the MURR Director. The oral warning memorandum contained a statement that the senior research scientist was "not authorized to discuss MURR management, priorities, etc. with any governmental [state or federal] officials." Based on the NRC's review of the circumstances surrounding these events, the NRC staff concludes that a violation of 10 CFR 50.7 occurred because the senior research scientist was engaged in a protected activity, and adverse action was taken against him as a direct result of his engaging in the protected activity. The oral warning memorandum contained statements that prohibit, restrict, or otherwise discourage the senior research scientist from participating in future protected activities. This memorandum is viewed as a restrictive agreement which prohibits the employee from engaging in protected activities, in violation of 10 CFR 50.7(f).

An employee is protected if he or she raises concerns regarding any matter within the jurisdiction of the NRC. In addition, an employee need not be correct in his or her belief that a potential violation of NRC requirements exists. This is important to allow individuals to bring forth any concern within NRC's jurisdiction without fear of discrimination.

Since the adverse action was taken against the former research scientist by the former MURR Director, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level III.

Because the violation involved willfulness, the NRC Staff considered whether credit was warranted for Identification and Corrective Action in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Since the NRC identified the violation, credit for identification is not warranted. Based on our review of MURR's planned corrective actions outlined in the responses to the March 5, 2001, letter, credit for corrective action is warranted.

Therefore, to emphasize the importance of maintaining a safety conscious work environment at MURR and prompt identification of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$3,000 for this Severity Level III violation.

This violation is of concern to the NRC because of a similar violation which was identified by the NRC in 1994 of 10 CFR 50.7 involving discrimination against employees for raising safety issues at MURR [EA 94-121]. The NRC is concerned that lasting corrective actions be implemented to ensure that safety issues are freely raised and addressed at MURR. The current violation calls into question the effectiveness of your corrective actions after the 1994 violation. In this regard, we considered your July 27 and August 10, 2001, responses and associated corrective actions. The corrective actions included the establishment of an Ombudsmen program, training for MURR management and staff regarding the attributes of a safety conscious work environment, focus group meetings to obtain employee feedback on a regular basis, development of MURR policy concerning harassment, retaliation or discrimination, and the establishment of additional communication lines between the MURR staff and Director. We find these corrective actions to be generally acceptable. However, we

have some concerns regarding your planned Ombudsmen program. In the Action Plan described in your August 10 letter, you stated that the three-member Ombudsmen panel will be

a contact point for receiving concerns related to Nuclear and Radiation Safety which could not be resolved through the supervisory chain, the Corrective Action Program, or the MURR Safety Oversight Committee (MSOC). However, it is not clear from your description of the program whether all employees will be permitted to raise concerns to the Ombudsman panel, or only researchers. In addition, to encourage the raising of nuclear-related concerns, the NRC interprets 10 CFR 50.7 as permitting employees to bypass any established management chain in raising such concerns. The NRC would therefore encourage the raising of such issues by all employees directly to the Ombudsman panel, regardless of whether such issues have been pursued through other channels.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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 enclosure(s), and your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA Cynthia A. Carpenter for/

David B. Matthews, Director
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Docket No. 50-186
License No. R-103

Enclosure: Notice of Violation

cc w/enclosure: Please see next page

University of Missouri-Columbia

Docket No. 50-186

cc:

University of Missouri
Associate Director
Research Reactor Facility
Columbia, MO 65201

A-95 Coordinator
Division of Planning
Office of Administration
P.O. Box 809, State Capitol Building
Jefferson City, MO 65101

Mr. Ron Kucera, Director
Intergovernmental Cooperation
and Special Projects
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

a contact point for receiving concerns related to Nuclear and Radiation Safety which could not be resolved through the supervisory chain, the Corrective Action Program, or the MURR Safety Oversight Committee (MSOC). However, it is not clear from your description of the program whether all employees will be permitted to raise concerns to the Ombudsman panel, or only researchers. In addition, to encourage the raising of nuclear-related concerns, the NRC interprets 10 CFR 50.7 as permitting employees to bypass any established management chain in raising such concerns. The NRC would therefore encourage the raising of such issues by all employees directly to the Ombudsman panel, regardless of whether such issues have been pursued through other channels.

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Docket No. 50-186
License No. R-103
Enclosure: Notice of Violation
cc w/enclosure: Please see next page

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

University of Missouri, Columbia
University of Missouri Research Reactor (MURR)
Columbia, Missouri

Docket No. 50-186
License No. R-103
EA 01-013

During an NRC investigation initiated on January 24, 2001, and concluded on April 17, 2001, (Case No. 4-2000-030S), a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC 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 violation and associated civil penalty are set forth below:

10 CFR 50.7 prohibits discrimination by a Commission licensee, permittee, an applicant for a Commission license or permit, or a contractor or subcontractor of a Commission licensee, permittee, or applicant against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and include, but are not limited to, testifying at any Federal or state proceeding regarding any provision of either the Atomic Energy Act or Energy Reorganization Act. These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

In addition, the regulations in 10 CFR 50.7(f) state, in part, that no agreement affecting the compensation, terms, conditions, or privileges of employment may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity, including, but not limited to, providing information to the NRC or to his or her employer on other matters within NRC's regulatory responsibilities.

Contrary to the above, on July 7, 1999, the University of Missouri Research Reactor (MURR) discriminated against a former research scientist for having engaged in protected activity. Specifically, in a letter to the Provost of the University of Missouri dated May 24, 1999, the former research scientist described a discussion he had had with a Department of Energy (DOE) official that he interpreted as involving a DOE concern regarding the level of commercial activity at MURR. As a result of writing this letter, an adverse action was taken against the former research scientist in that he was given an oral warning as documented in a memorandum dated July 7, 1999, from the MURR Director. In addition, the oral warning contained a statement that he was "not authorized to discuss MURR management, priorities, etc. with any governmental [state or federal] officials," which would prohibit, restrict and discourage him from engaging in protected activity.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$3,000

Pursuant to the provisions of 10 CFR 2.201, the University of Missouri-Columbia (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 date 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 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. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. 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 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.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, 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 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty, 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 violation 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.C.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 which 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, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Frank J. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to David B. Matthews, Director, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

Because your response will be placed and made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site (the Public Electronic Reading Room) at <http://www.nrc.gov/NRC/ADAMS/index.html>. 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 Rockville, Maryland
this 22 day of October 2001