



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931**

November 7, 2002

IA-02-042

Donald M. Kirby
[HOME ADDRESS DELETED
PER 10 CFR 2.790]

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 2-2002-021

Dear Mr. Kirby:

This letter is in reference to an investigation completed by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) on August 28, 2002. The purpose of the OI investigation was to determine whether radiation surveys had been deliberately falsified at Duke Energy Corporation's (DEC) Catawba Nuclear Station. The investigation found that, during your employment at Catawba as a Radiation Protection Specialist, you deliberately falsified radiation surveys from a period of at least January through June 2002. The synopsis to the OI report is included as Enclosure 1 to this letter.

Based on our review of the investigative report, an apparent violation of the NRC's rule prohibiting deliberate misconduct, 10 CFR 50.5, has been identified. This rule prohibits any employee of a licensee from (1) engaging in deliberate misconduct that causes a licensee to be in violation of any rule, regulation or order of the NRC or any condition of a license; or (2) deliberately submitting to a licensee information that the person submitting the information knows to be incomplete and inaccurate in some material respect to the NRC. In this case, you failed to perform required, routine radiation surveys on numerous occasions and deliberately fabricated data on the required radiological survey records submitted to the licensee. Your actions, in this regard, caused the licensee to be in violation of Technical Specification 5.4; Procedure HB/0/B/1000/045; Radiation Protection Routines, Revision 6; and 10 CFR 50.9 which require that routine surveys be performed and associated documentation be maintained complete and accurate.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either (1) respond to the apparent violation within 30 days of the date of this letter or (2) request a predecisional enforcement conference. If a conference is held, it will be closed to public observation. Please contact Anne T. Boland, Chief, Plant Support Branch at (404) 562-4653 within seven days of the date of this letter to notify the NRC of your intended response.

The purpose of a predecisional enforcement conference is to discuss the apparent violation and the circumstances surrounding it, and to give you an opportunity to provide your perspective on this issue and any other information you believe is relevant to the NRC's enforcement determination. Although not required, you may provide the NRC a written reply to the apparent violation prior to or during the conference. In addition, you may have an attorney or personal representative attend the conference with you, but it should be understood that the NRC will address its questions directly to you.

If you choose to respond in writing, your response should be clearly marked as a "Response to an Apparent Violation - OI Report No. 2-2002-021" and submitted to the above address, ATTN: Anne T. Boland, Chief, Plant Support Branch. The response should include: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation, (2) the corrective steps that have been taken and the results achieved, and (3) the corrective steps that will be taken to avoid further violations.

If the NRC concludes that you deliberately caused or committed a violation of NRC requirements, the possible sanctions which may be pursued include a Notice of Violation, civil penalty, or an order. An order may prohibit your involvement in NRC-licensed activities, or require other action. As such, whether you choose to attend a conference or respond in writing, you are specifically invited to address the factors that the NRC would consider in determining whether enforcement action should be taken against you. These factors are described in Section VIII, "Enforcement Actions involving Individuals," of the enclosed copy of the "General Statement of Policy and Procedures for Enforcement Actions" (Enforcement Policy), NUREG-1600 (Enclosure 2).

If a conference is not requested or an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

Please be advised that the characterization of the apparent violation described above may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

A copy of this letter and its enclosures will not be placed in the NRC Public Document Room (PDR) at this time. However, if an enforcement action is issued to you, a copy of this letter and its enclosures will be placed in the PDR in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice."

Should you have any questions concerning this letter, please contact me at (404) 562-4600 or Anne Boland, at (404) 562-4653.

Sincerely,

/RA/

Charles A. Casto, Director
Division of Reactor Safety

Enclosures: 1. Synopsis to OI Report
2. NRC Enforcement Policy

CERTIFIED MAIL NO. 7001 2510 0004 5474 5711
RETURN RECEIPT REQUESTED

Distribution w/Enclosure 1 only:IMMEDIATE

D. Dambly, OGC
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 F. Congel, OE
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 C. Evans, RII
 S. Rosenberg, EDO
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**THIS ACTION MAY NOT BE RELEASED TO THE PDR OR OUTSIDE THE AGENCY
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OFFICE							
SIGNATURE							
NAME	ABoland	RHaag	CEvans	CCasto			
DATE	11/6/02	11/7/02	11/6/02	11/6/02	11/ /2003	11/ /2003	11/ /2003
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO
PUBLIC DOCUMENT	YES NO						

SYNOPSIS

The U.S. Nuclear Regulatory Commission, Office of Investigations, Region II, initiated this investigation on June 28, 2002, to determine if a former radiation protection specialist at the Duke Energy Corporation, Catawba Nuclear Station, deliberately falsified radiological surveys.

Based upon evidence developed, testimony, and documentation obtained during this investigation, the allegation that a radiation protection specialist at the Catawba Nuclear Station deliberately falsified radiological surveys was substantiated.

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FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION II