



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 26, 2005

IA 05-030

Ralph Black
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-2005-003; NRC
Inspection No. 03034284/2004001

Dear Mr. Black:

This letter is in reference to an NRC inspection conducted on November 18, 2004 and an investigation completed on May 19, 2005, by the NRC's Office of Investigations (OI) at the facilities of Foundation Engineering Sciences, Inc. (FES) located in Newport News, Virginia. The OI investigation was initiated to determine if you, as an authorized user, deliberately failed to maintain control of a licensed portable gauging device that was stolen and deliberately failed to report the theft of the material to your management.

Based on the NRC inspection and OI investigation, OI concluded that you, as the authorized user of licensed material, deliberately failed to control a licensed portable gauging device that was eventually stolen and deliberately failed to report the theft of licensed material to your management, which resulted in a failure to file a required immediate report with the NRC. Your actions appear to constitute a violation of 10 CFR 30.10, Deliberate Misconduct.

10 CFR 30.10(a)(1) provides, in pertinent part, that any employee of any licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or any term, condition, or limitation of any license issued by the Commission. In apparent violation of 10 CFR 30.10(a)(1), you deliberately: 1) caused FES to be in violation of 10 CFR 20.1801 because adequate security to prevent unauthorized removal of licensed material was not maintained for licensed material stored in controlled or unrestricted areas, and 2) caused FES to be in violation of 10 CFR 20.2201 in that immediate notification of theft of licensed material was not made until seven days following the date that the material was actually stolen.

A letter to FES containing 1) NRC Inspection Report No. 03034284/2004001, and 2) a Factual Summary of OI Investigation 2-2005-003 is enclosed with this letter.

The apparent violation against you is being considered for escalated enforcement in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What we Do, Enforcement**, then **Enforcement Policy**. There are three options available to you to assist NRC in reaching an enforcement decision in this matter: 1) respond in writing to the apparent violation and deliberate actions

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alleged above within 30 days of the date of this letter; 2) request a Predecisional Enforcement Conference (PEC); or 3) request Alternative Dispute Resolution (ADR).

If you choose to provide a written response, it should be clearly marked as a "Response to an Apparent Violation" and should include for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation, and (2) the corrective steps that have been taken and the results achieved.

If you choose to attend a PEC, you will have the opportunity to discuss the apparent violation before an enforcement decision is made. This conference will be held at the Region I Office in King of Prussia, PA, will be closed to public observation and will be transcribed. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. The conference will be held to achieve a common understanding of the facts in the case, obtain appropriate information so that we can determine whether a violation occurred, to determine the significance of any violation which did occur, and to understand any corrective actions taken or planned by you. The conference will provide an opportunity for you to provide your perspective on these matters, and any other information that you believe the NRC should take into consideration in making an enforcement decision. Our final decision on enforcement action will not be available at the conclusion of the PEC. You will be advised by separate correspondence of the results of our deliberations on all the information pertaining to the violation including that received at the PEC.

Instead of providing a written response or attending a PEC, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether a violation occurred and the appropriate enforcement action. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. You must contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of these issues through ADR.

You must also contact Mr. John D. Kinneman at (610) 337-5252 within 10 days of the date of this letter to notify the NRC of your decision to provide a written response or either participate in a PEC or pursue ADR. If you do not provide a written response or participate in either process, we will make an enforcement decision based on the available information.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room). However, the NRC will delay making available a copy of this letter until an enforcement decision has been made. At that time, if enforcement action is taken, a copy of this letter, with your home address removed will be made available to the Public in accordance with 10 CFR 2.390 of the NRC's "Rules of Practice."

This letter will be maintained by the Office of Enforcement (OE) in a NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Should you have any questions concerning this letter, you should call Mr. Kinneman at (610) 337-5252.

Thank you for your cooperation.

Sincerely,

Original signed by Francis Costello

George Pangburn, Director
Division of Nuclear Materials Safety

Enclosures:

1. NRC letter to FES with Inspection Report & Factual Summary of OI Investigation
2. Brochure NUREG BR-0317

R. Black

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