



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

September 25, 2001

SUBJECT: ALLEGATION NO. RIII-99-A-0210

This is in reference to our letter dated July 24, 2001, that stated we continued to review your concern about employment discrimination for raising safety issues at ABB Combustion Engineering located in Hematite, Missouri. We have completed our review of this concern, which you brought to our attention on December 17, 1999. Your other concern (concern 2) related to the training provided to individuals working in a contaminated area, was closed in a July 17, 2000 letter.

The enclosure to this letter describes your employment discrimination concern and the results of our evaluation. Based upon an investigation conducted by the NRC Region III Office of Investigations, we did not substantiate this concern. The enclosure to this letter provides the basis for this conclusion.

Thank you for informing us of your concerns. We take our safety responsibilities to the public very seriously and appreciate your willingness to bring these issues to our attention. Based on the results of our review, we consider the issues closed.

If you disagree with our conclusion or wish to provide additional information, please contact the Region III Office Allegation Coordinators by writing to the U.S. Nuclear Regulatory Commission, Region III, at 801 Warrenville Road, Suite 255, Lisle, Illinois 60532-4351, or calling the NRC Region III switchboard toll free at (800) 522-3025 or the NRC Safety Hotline at (800) 695-7403. Your cooperation is appreciated.

Sincerely,

Marc J. Capra for

Cynthia D. Pederson, Director
Division of Nuclear Materials Safety

Enclosures: 1. Closure Information
2. Synopsis

cc w/enclosure 1: AMS File No. RIII-1999-A-0210

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 7C
FOIA- 2004-0234

J-18

(24)

Concern 1:

You claimed that the licensee forced you to resign after it required you to work in a hazardous area during a labor strike and you raised concerns about the safety of working in the plant. You stated that the area was contaminated with uranium dust. You informed the licensee that the contamination could effect development of a baby if the baby was conceived while you were working in the area. You stated that you discussed this concern with your supervisor. During this conversation, you asked the supervisor to reassign you to another area. The supervisor gave you the choice of working in the assigned area or leaving, and you ultimately resigned. You believed that your resignation was forced due to the safety issue you raised.

NRC conclusion for concern 1:

This concern was the subject of an investigation conducted by the NRC Region III Office of Investigations (RIII:OI). The results of the investigation were reviewed by members of our technical, legal, and enforcement staffs located in our Region III and Headquarters offices.

RIII:OI initiated an investigation into this matter on January 10, 2000. However, since you filed a complaint with the Department of Labor (DOL), RIII:OI deferred its investigation into the matter pending the results of the DOL's evaluation. When we were notified that you settled your complaint with the DOL on September 1, 2000, the NRC staff determined that further investigation was needed to determine whether the concern was substantiated.

Based upon the evidence developed during the investigation, the NRC staff did not conclude that you were discriminated against for raising safety issues. The results of the investigation indicated that you raised a concern regarding the radiological risks of working in the plant due to your concern about exposure during a future pregnancy and that you resigned after your request to be reassigned to another area of the plant was rejected. However, the NRC staff did not conclude that you were forced to resign because you raised safety issues. Rather, the evidence developed during the investigation indicated that all salaried employees were required to replace striking workers during a strike at the site in September through November 1999, and that you resigned due to your concerns about working in the plant.

Based upon a review of the information obtained during the investigation, the NRC staff concluded that the licensee was not required to limit your exposure to radiation beyond the NRC's occupational dose limits due to your concerns about exposure during a future pregnancy. Specifically, although NRC regulations require that doses to pregnant workers be limited, the restrictions do not apply unless the individual declares a pregnancy in writing. During the investigation, you indicated that you had not declared a pregnancy in writing and that you were concerned about exposure to radiation if you became pregnant in the future. Regulatory guidance on this topic also specifies that the lower dose limits for pregnant workers do not apply if you are planning to become pregnant; rather, you must declare a pregnancy in writing before the licensee is required to limit your exposure to radiation beyond the established occupational dose limits.

In addition, the evidence obtained during the investigation indicated that work conducted during the strike was completed safely and in accordance with NRC requirements. According to testimony during the investigation, the salaried employees were trained for these temporary positions, and NRC inspection during this time determined that the strike contingency plan was

ENCLOSURE

RIII-1999-A-0210

conducted safely and in accordance with NRC requirements. Despite licensee management's meeting with you to provide this information and allay your feelings that the plant was not safe, you remained apprehensive to work in the plant and resigned as a result.

Based upon this information, the NRC staff concluded that, although you raised concerns about radiological exposure due to working in the plant during the strike, you were not terminated or forced to resign because you raised these concerns. Rather, due to your personal feelings of apprehension about working in the plant and your concern about exposure during future pregnancies, you willingly chose to resign. Based on the results of the investigation, we determined that the licensee conducted activities safely during this time and was not required to limit your exposure beyond the NRC's established occupational dose limits, since you had not declared a pregnancy in writing. We plan no further action and consider this matter closed.

We have enclosed a copy of the Region III Office of Investigations report synopsis. In accordance with the NRC's "Rules of Practice," we will send a letter providing a copy of the synopsis to the licensee. A copy of that letter will be placed in the NRC Public Document Room and is Publicly Available from the 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). Final NRC documents, including the final Office of Investigations report, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information pursuant to the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23.

OI SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission, Office of Investigations (OI), Region III (RIII), on November 20, 2000, regarding an allegation that ABB Combustion Engineering (ABB-CE) discriminated against an employee by requiring the employee who raised safety concerns to work in an assigned area in the plant or resign.

Based on the evidence developed during this investigation, OI:RIII could not substantiate the allegation that an employee was discriminated against in violation of 10 CFR 40.7 at ABB-CE for raising safety concerns.