

November 16, 2005

IA-05-062

Mr. Raymond C. Restani, II
**[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]**

SUBJECT: NOTICE OF VIOLATION AND EXPIRATION OF LICENSE

Dear Mr. Restani:

The NRC received a letter from Constellation Energy dated October 25, 2005, containing information pertaining to your confirmed positive test for marijuana on September 21, 2005, while working as a Chief Shift Operator at Nine Mile Point Unit 1. The NRC received another letter from Constellation Energy dated October 25, 2005, informing us that your employment was terminated and your operator license at Nine Mile Point Unit 1 was no longer required. We plan to place both of these letters in your 10 CFR Part 55 docket file.

In accordance with 10 CFR 55.55(a), the determination by your facility licensee that you no longer need to maintain a license has caused your license (License No. OP-11167-1) to expire as of September 26, 2005. In addition, the following violation is being issued on your docket:

10 CFR 55.53(j) prohibits the use of illegal drugs, and prohibits the licensee from performing activities authorized by a license issued under 10 CFR Part 55 while under the influence of an illegal substance. "Under the influence" is defined in 10 CFR 55.53(j) to mean that the "licensee exceeded, as evidenced by a confirmed positive test, the lower cutoff levels for drugs or alcohol contained in 10 CFR Part 26, Appendix A, of this chapter, or as established by the facility licensee."

Contrary to the above, while holding an NRC license (OP-11167-1), you used an illegal substance and performed activities authorized by your NRC license while under the influence of that illegal substance. Specifically, on September 21, 2005, a random fitness-for-duty test was positive for marijuana, which was verified to exceed the cutoff level in 10 CFR Part 26, while you performed licensed activities at Nine Mile Point Unit 1.

This is a Severity Level III violation. (Supplement I).

The purpose of the Commission's fitness-for-duty requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free of drugs and alcohol and the effects of the use of these substances. The use of illegal drugs is a serious matter which undermines the special trust and confidence placed in you as a licensed reactor operator. This violation is categorized at Severity Level III in accordance with the NRC Enforcement Policy, because the use of illegal drugs by licensed operators is a significant regulatory concern. The NRC Enforcement Policy can be found on the NRC's web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. R. Restani

Because your license has expired, you are not required to respond to the Notice of Violation at this time **unless you contest the violation**. Should you contest the Notice of Violation, a response is required within 30 days of the date of this letter addressing the specific basis for disputing the violation. This response should be sent to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA, 19406 and marked, "Open by Addressee Only - Response to a Notice of Violation; IA-05-062."

The purpose of this letter is also to make clear to you the consequences of your violation of NRC requirements governing fitness-for-duty as a licensed operator, in accordance with 10 CFR Part 55. If you reapply for an operating license, you will need to satisfy not only the requirements of 10 CFR 55.31, but also those of 10 CFR 2.201, by addressing the reasons for the violation and the actions you have taken to prevent recurrence in order to ensure your ability and willingness to carry out the special trust and confidence placed in you as a licensed operator and to abide by all fitness-for-duty and other license requirements and conditions.

In accordance with Section 2.390 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. A copy of this letter will be made available to the Public after 45 days unless you provide a sufficient basis to withdraw this violation. At such time, the NRC will also include this letter on its website for a period of 1 year at www.nrc.gov; select **What We Do, Enforcement, Significant Enforcement Actions**, then **Individuals**. Your response, if you choose to provide one, with your address removed, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

This letter will also 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 website at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Should you have any questions concerning this action, please contact Richard Conte, Chief, Operations Branch, at (610) 337-5183.

Sincerely,

/RA/

A. Randolph Blough, Director
Division of Reactor Safety
Region I

Docket No. 55-61774
License No. OP-11167-1

cc: Nine Mile Point Nuclear Station

Mr. R. Restani

Immediate Distribution:

OE: EA File

OE: IA File

MJohnson, OE

KFarrar, RI

DHolody, RI

RURban, RI

SFiguroa, OE

Distribution (Release After 45 Day Hold):

ADAMS (PARS)

SECY

OCA

OEMAIL

OEWB

LReyes, EDO

WKane, DEDR

MJohnson, OE

SFiguroa, OE

LTrocine, OE

NHilton, OE

BBoger, NRR

JDyer, NRR

RBorchardt, NRR

PBonnett, NRR

SLee, RI OEDO

LChandler, OGC

BJones, OGC

MEIwood, OGC

KRemsberg, OGC

SGagner, OPA

HBell, OIG

JSchlueter, STP

GCaputo, OI

LTremper, OC

WOutlaw, OCM

Enforcement Coordinators RII, RIII, RIV

JTrapp, DRP

RLaufer, NRR

TColburn, NRR

P. Milano, PM (backup) NRR

LCline, SRI

SCollins, RA

MDapas, DRA

DScrenci/NSheehan, PAO-RI

KFarrar, RI

DHolody/RURban, RI

R1DRP_Mail

Region I OE Files (with concurrences)

Region I Docket Room

SISP Review Complete: rju (Reviewer's Initials)

DOCUMENT NAME: E:\Filenet\ML053200189.wpd

After declaring this document "An Official Agency Record" it will be released to the Public.

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	RI/DRS	RI/DRS	RI/OI	RI/ORA	RI/ORA
NAME	TFish	RConte	EWilson	DHolody	KFarrar
DATE	11/09/05	11/09/05	11/14/05	11/15/05	11/15/05
OFFICE	HQ/NRR	RI/DRS	HQ/NSIR	HQ/OE	
NAME	DTrimble/RJU for	ABlough/MKG for	EWest*	MBurrell*	
DATE	11/10/05	11/16/05	11/14/05	11/15/05	

OFFICIAL RECORD COPY

*per phone call w/RURban & M. Burrell 11/15/05