



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
245 PEACHTREE CENTER AVENUE NE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

October 15, 2010

EA-10-114

Mr. David J. Precht
Acting Manager, Columbia Plant
Westinghouse Electric Company
Commercial Nuclear Fuel Division
5801 Bluff Road, Drawer R
Columbia, SC 29250

SUBJECT: NOTICE OF VIOLATION (NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-2009-029, AND NRC INSPECTION REPORT 70-1151/2009-005)

Dear Mr. Precht:

This refers to an investigation initiated on June 3, 2009, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) at the Westinghouse Electric Company (WEC), located in Columbia, SC. The purpose of the investigation was to determine whether an Integrated Fuel Burnable Absorber (IFBA) Operator, employed by WEC, or an employee of WEC, willfully failed to complete a Material Control & Accounting (MC&A) transaction by concealing the identification of a polypak holding Special Nuclear Material (SNM) and hiding the polypak at issue in an inappropriate storage area.

Details of the NRC inspection of this matter were transmitted to WEC in a special inspection report 70-1151/2009-005, dated October 29, 2009 (ML0930205293). The special inspection revealed that between May 8 and May 22, 2009, an unidentified licensee employee or employees removed the contents of Item B85403, a seven-inch polypak container, without performing the appropriate MC&A transaction, causing the item to be recorded as unaccounted for and identified in a 7-day non-movement report. Licensee records indicated that the item contained a small amount of scrap low enriched uranium pellets. After several days of searching, an empty polypak container that had apparently been labeled as Item B85403 was found with the item label defaced and placed among a group of retired polypak containers.

As noted in the special inspection report, the NRC concluded that the immediate corrective actions taken by the licensee to halt the manufacturing processes, notify the NRC in accordance with requirements and initiate a facility search for the unaccounted item were adequate. Subsequent efforts by WEC's MC&A staff to perform a material balance to conclude that unaccounted for SNM was processed as scrap material, neither proved nor disproved that the material remained within the manufacturing and recycling processes of the facility.

The NRC concluded however, that the event had no actual safety significance and low potential safeguards significance considering the following factors: (1) the lack of evidence that the special nuclear material had actually been diverted, (2) the small quantity of SNM involved, and (3) the material's general unsuitability for malicious use.

While it could not be proven, the special inspection team (SIT) concluded that it is likely the unaccounted for material remained on site and was most likely placed into the scrap recovery process. The SIT also determined that in the unlikely event the unaccounted fuel pellets remained on site or were released to the environment, the low radiation levels would not have measurably increased radiation levels, and as a result, there would be no increase in the risk to workers, the public, or environment.

Based on the information developed during the inspection and investigation, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) (Enclosure 1) and the circumstances surrounding the violations are described in detail in the subject inspection report. The violation involves the licensee's failure to maintain current knowledge of Item B85403, containing SNM for a period that exceeded 14 days as required by 10 CFR 74.31(c)(6). The synopsis of the NRC OI completed report regarding this matter is also enclosed (Enclosure 2) for your information.

The violation is being cited because the failure to maintain current knowledge of a discrete quantity or container of special nuclear material or source material that is not undergoing processing has more than minor safeguards significance. As noted in the special inspection report, the licensee root cause determination was "indeterminate." The NRC reviewed the analysis results and determined that although the licensee made a credible attempt to determine the root cause and to investigate the human factors which contributed to this event, the NRC concluded that the root cause investigation may have been more effective if the scope had been expanded and additional investigators with more extensive training and experience in reviewing events of this type been assigned. Therefore the NRC has characterized the significance of this violation at Severity Level IV in accordance with NRC's Enforcement Policy Supplement III - Safeguards. The violation was evaluated in accordance with the NRC Enforcement Policy which is included on the NRC's web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>.

You are required to respond to the violation in this letter and should follow the instructions specified in the enclosed Notice when preparing your response. For your consideration and convenience, NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," is available on the NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>. 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 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures and your response will be 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> (the Public Electronic Reading Room). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

If you have any questions, please call me at (404) 997-4629.

Sincerely,

/RA/

Marvin D. Sykes, Chief
Fuel Facility Inspection Branch 3
Division of Fuel Facility Inspection

Docket No. 70-1151
License No. SNM-1107

Enclosures:

1. Notice of Violation
2. OI Synopsis

cc w/encls:

Marc Rosser
Manager
Environment, Health and Safety
Commercial Nuclear Fuel Division
Electronic Mail Distribution

Susan E. Jenkins
Assistant Director, Division of Waste Management
Bureau of Land and Waste Management
Department of Health and Environmental Control
Electronic Mail Distribution

Distribution w/encls:

M. Sykes, RII
M. Tschiltz, NMSS
P. Habighorst, NMSS
R. Gibson, RII
C. Ryder, NMSS
M. Baker, NMSS

*see previous concurrence

PUBLICLY AVAILABLE NON-PUBLICLY AVAILABLE SENSITIVE NON-SENSITIVE

ADAMS: Yes ACCESSION NUMBER: _____

| OFFICE | RII:DFFI | RII:DFFI | RII:DFFI | RII:DFFI | | |
|--------------|-------------|-------------|-------------|------------|-----|----|
| SIGNATURE | JP 10/15/10 | JD 10/15/10 | MR 10/15/10 | RG 10/7/10 | | |
| NAME | JPelchat | JDiaz | MRomano | RGibson* | | |
| DATE | | | | | | |
| E-MAIL COPY? | YES | NO | YES | NO | YES | NO |
| | YES | NO | YES | NO | YES | NO |

NOTICE OF VIOLATION

Westinghouse Electric Company
Columbia, SC

Docket No. 70-1151
License No. SNM-1107
EA-10-114

During an investigation completed by the NRC's Office of Investigations on June 3, 2009, and a Special Inspection conducted from May 26 to July 31, 2009, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 74.31(c)(6) requires, in part, with exemptions not applicable here, that a licensee maintain current knowledge of items when the sum of the time of existence of an item, the time to make a record of the item, and the time necessary to locate the item exceeds 14 days.

Contrary to the above, as of May 22, 2009, the licensee failed to maintain current knowledge of Item B85403, a seven inch polypack container, containing a small amount of uranium enriched to 4.8 percent in U235 isotope. Specifically, the NRC determined that the licensee's failure to maintain current knowledge of Item B85403 for a period that exceeded 14 days was the result of the actions of one or more unidentified individuals.

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

Pursuant to the provisions of 10 CFR 2.201, Westinghouse Electric Company, L.L.C., is hereby required to submit a written statement or explanation to the U.S Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with copy to the Regional Administrator, Region II, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previously 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 to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should be taken. Where good cause is shown, consideration will be given to extending the response time. If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. 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 basis 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 2.390(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 describe in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 15th day of October, 2010

Official Use Only - OI Investigation Information

SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region II (RII), on June 3, 2009, to determine whether an Integrated Fuel Burner Absorber (IFBA) Operator, employed by Westinghouse Electric Company, LLC (Westinghouse) or an employee of Westinghouse willfully failed to complete a Material Control & Accountability (MC&A) transaction, by concealing the identification of a polypak holding Special Nuclear Material (SNM) and hiding the polypak at issue in an inappropriate storage area.

Based on the documentation and testimony developed during this investigation, OI:RII substantiated that an unidentified individual(s) willfully failed to complete a Material Control & Accountability (MC&A) transaction, by concealing the identification of a polypak holding Special Nuclear Material (SNM) and hiding the polypak at issue in an inappropriate storage area.

Enclosure 2

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION II~~

Official Use Only - OI Investigations Information