



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

January 13, 2014

IA-13-055

Mr. John Amburgey
**[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]**

**SUBJECT: NOTICE OF VIOLATION, U.S. NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS REPORT NUMBER 2-2013-010**

Dear Mr. Amburgey:

This letter refers to the results of an investigation completed by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) on August 19, 2013. The purpose of the investigation was to review the facts and circumstances involving your positive for-cause alcohol test result that revealed that you were not fit-for-duty, approximately 5 hours into your armed security officer shift, at the Surry Power Station (SPS) on December 7, 2012.

The NRC's review of the investigation resulted in the identification of one apparent violation involving your failure to comply with Title 10 of the *Code of Federal Regulations* (10 CFR) 50.5(a)(1), which states, in part, that an employee of an NRC licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order. In this case, you engaged in deliberate misconduct that caused an NRC licensee, the SPS, to be in apparent violation of 10 CFR 73.55(i)(5)(ii), which requires the licensee to provide continuous surveillance, observation, and monitoring of the owner controlled area (OCA), as described in its physical security plan, to detect and deter intruders and ensure the integrity of physical barriers or other components, and functions of the onsite physical protection program. The results of the investigation, including a factual summary of the OI report, were forwarded to you by Certified Mail letter dated November 15, 2013.

In the letter transmitting the investigative results, we provided you the opportunity to respond to the apparent violation (AV) within 30 days of the date of our letter, request a predecisional enforcement conference (PEC), or request that this enforcement matter be resolved via the NRC's Alternative Dispute Resolution (ADR) process. On December 2, 2013, the NRC received confirmation that our letter of November 15, 2013, was received via certified mail. On December 16, 2013, you called and spoke with representatives of the NRC Region II Security Branch. After discussing the options available to you as outlined in our letter, you advised NRC Region II representatives that you would not be providing a written response to the AV, and that you would not be requesting a PEC or ADR meeting. Therefore, the NRC is proceeding with its enforcement action based on our review of the OI investigation.

**Certified Mail Number: 7012 3050 0001 9196 2897
Return Receipt Requested**

Based on the information developed during the investigation, the NRC has determined that a deliberate violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice). Specifically, at approximately 11:30 p.m. on December 7, 2012, co-workers at SPS detected the odor of alcohol on your breath, and immediately reported this observation to site security supervision. In response, you were promptly for-cause tested for alcohol, and test results confirmed a Blood Alcohol Concentration (BAC) level of 0.139 percent. Because your BAC exceeded the 10 CFR 26.103 limit of 0.04 percent, the licensee declared your test result for alcohol as a confirmed positive test result, and you were relieved of duty. Based on your confirmed positive test, and the fact that you had been on duty approximately 5 hours at the time of testing, you were unable to effectively perform your assigned OCA security duties, and caused the licensee to be in violation of 10 CFR 73.55(i)(5)(ii). As such, your actions constituted a violation of 10 CFR 50.5(a)(1), in that you engaged in deliberate misconduct that caused an NRC licensee to be in violation of a regulation.

In this case, your actions did not adversely affect the health and safety of the public, because there was no security event necessitating a security response at SPS, and because of the multi-layered security measures that are required at SPS and at all NRC licensed power reactors. However, your egregious, deliberate actions are unacceptable and cannot be tolerated. Given the significance of the underlying issue and the deliberate nature of your actions, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. In determining the appropriate sanction in this case, the NRC considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, after consultation with the Director, Office of Enforcement, and in consideration of the fact that SPS's review of your work history did not identify other instances in which you may have been unfit for duty, SPS's prompt and effective response to your actions, termination of your access to the facility, and a flagged entry of your name into the nuclear power industry's Personnel Access Data System (PADS), I have decided to issue the enclosed Notice of Violation (NOV). You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action.

You are not required to respond to the Notice unless you contest the violation. If you desire to contest the 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 U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, 245 Peachtree Center Avenue, Suite 1200, Atlanta, Georgia 30303-1257, and marked "Open by Addressee Only."

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its Enclosure, and your response (if you choose to provide one), will be made available electronically for public inspection in the NRC Public Document Room, or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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. The NRC also includes significant enforcement

actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>). In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly accessible, includes all records pertaining to individuals who are being, or have been, considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

If you have any questions, please call Mr. Binoy Desai at 404-997-4519.

Sincerely,

/RA by Leonard D. Wert Acting For/

Victor M. McCree
Regional Administrator

Enclosure:
Notice of Violation

cc: Distribution via Listserv

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Sincerely,

/RA by Leonard D. Wert Acting For/

Victor M. McCree
Regional Administrator

Enclosure:
Notice of Violation

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ADAMS: ☒ Yes ACCESSION NUMBER: ML14014A026 ☒ SUNSI REVIEW COMPLETE ☒ FORM 665 ATTACHED

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DATE	12/ 12 /2013	12/ 9 /2013	12/ 13 /2013	1/ 13 /2014	1/ 6 /2014	1/ 6 /2014	1/ 6 /2014
E-MAIL COPY	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO
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SIGNATURE	LXW1 for VMM						
NAME	V. McCree						
DATE	1/ 13 /2014						
E-MAIL COPY	YES NO						

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NAME:

NOTICE OF VIOLATION

Mr. John Amburgey
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.390]

IA-13-005

During a U.S. Nuclear Regulatory Commission (NRC) investigation completed on August 19, 2013, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the *Code of Federal Regulations* (10 CFR) 50.5(a)(1), states, in part, that an employee of an NRC licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order.

As required by 10 CFR 73.55(i)(5)(ii), the licensee shall provide continuous surveillance, observation, and monitoring of the owner controlled area (OCA), as described in their physical security plan, to detect and deter intruders and ensure the integrity of physical barriers or other components, and functions of the onsite physical protection program.

Contrary to the above, on December 7, 2012, you engaged in deliberate misconduct that caused an NRC licensee, the Surry Power Station (SPS), to be in violation of a regulation. Specifically, at approximately 11:30 p.m. on December 7, 2012, co-workers detected the odor of alcohol on your breath, and immediately reported this observation to site security supervision. In response, you were promptly for-cause tested for alcohol, and test results confirmed a Blood Alcohol Concentration (BAC) level of 0.139 percent. Because your BAC exceeded the 10 CFR 26.103 limit of 0.04 percent, the Surry Power Station declared your test result for alcohol as a confirmed positive test result, and you were relieved of duty. Based on your confirmed positive test, and the fact that you had been on duty approximately 5 hours into your armed security officer shift at the SPS, you were unable to effectively perform your assigned OCA security duties, and deliberately caused an NRC licensee to be in violation of 10 CFR 73.55(i)(5)(ii).

This is a Severity Level III violation.

The NRC has concluded that information regarding the reasons for the violation, and the corrective actions taken by the licensee, including terminating your employment, and the actions to prevent recurrence, including your name being placed in the industry's Personnel Access Data System (PADS), is already adequately addressed in a letter from the NRC to you dated November 15, 2013, and in NRC Investigation Report No. 2-2013-010. Therefore, you are not required to submit a written statement or explanation pursuant to 10 CFR 2.201, unless the description in the above referenced letter and report does not accurately reflect your position. In that case, or if you otherwise choose to respond, you should clearly title your response as a "Reply to a Notice of Violation, IA-13-055" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, 245 Peachtree Center Avenue, Suite 1200, Atlanta, Georgia 30303-1257, and marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Enclosure

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.

Your response, should you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room, and in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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 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 bases 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 described in 10 CFR 73.21. This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly accessible, includes all records pertaining to individuals who are being, or have been, considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated this 13th day of January 2014.