

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Centerior Service Company
Perry Nuclear Power Plant

Docket No. 50-440
License No. NPF-58
EA 96-253

Based on the Recommended Decision and Order by a U.S. Department of Labor (DOL) Administrative Law Judge dated June 11, 1996 (DOL Case No. 96-ERA-6), violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

10 CFR 50.7(a), in part, prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to the compensation, terms, conditions, or privileges of employment. Protected activities are described in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or Energy Reorganization Act, and include, but are not limited to, an employee providing the Commission or his or her employer information about alleged violations of either the Atomic Energy Act or the Energy Reorganization Act.

1. Contrary to the above, as determined by the DOL Administrative Law Judge's Recommended Decision and Order in Case No. 96-ERA-6 dated June 11, 1996, Centerior Energy Company discriminated against six insulators, Messrs. Owen McCafferty, Dennis Maloney, Sean Kilbane, Terry McLaughlin, Sean McCafferty, and Robert Prohaska, for engaging in protected activities in that on October 13, 1995, Centerior banned all six insulators from working at any Centerior facility in retaliation for the insulators filing a civil complaint under the Atomic Energy Act. (01012)
2. Contrary to the above, as determined by the DOL Administrative Law Judge's Recommended Decision and Order in Case No. 96-ERA-6 dated June 11, 1996, Centerior Energy Company discriminated against Mr. Dennis Maloney on October 16, 1995, when it instructed its contractor to terminate Mr. Maloney from his employment at the Perry Nuclear Power Plant in retaliation for the insulators filing a civil complaint under the Atomic Energy Act. (01022)

This is a Severity Level II Problem (Supplement VII).
Civil Penalty - \$160,000.

Pursuant to the provisions of 10 CFR 2.201, Centerior Service Company (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition

of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. At your election, responses to Items (1) and (2) may be deferred until 30 days after the decision of the U.S. Department of Labor Administrative Review Board. 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 why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within 30 days of the final decision of the U.S. Department of Labor Administrative Review Board in this case, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless

compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR 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 2.790(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.

Dated at Lisle, Illinois
this 9th day of October 1996