



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-8064

October 22, 1996

IA 96-062

Mr. David A. Harris  
[HOME ADDRESS DELETED  
UNDER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION (NRC INVESTIGATION REPORT NO. 4-95-056)

Dear Mr. Harris:

This refers to the investigation conducted by the NRC's Office of Investigations (OI) at Union Electric's Callaway plant. The investigation was completed in July 1996. The investigation was conducted to review the circumstances surrounding possible tampering with a urine sample submitted for drug testing purposes and to determine whether you were the subject of employment discrimination for identifying concerns related to Callaway's security program.

In October 1995, the NRC was informed by Union Electric that you had been relieved from duty as a contract security shift supervisor based on possible tampering with a urine sample you submitted under Callaway's required Fitness for Duty (FFD) program. Specifically, you submitted a urine sample with a significantly elevated temperature. You were terminated by Burns International Security in November 1995 as a result of this incident. You then alleged to the NRC and in a complaint filed with the U.S. Department of Labor (DOL) that your termination was due, at least in part, to having raised concerns about the Callaway security program. In April 1996, the District Director of the DOL's Wage Hour Division in St. Louis, Missouri, informed you in a letter that the DOL's fact-finding investigation did not substantiate your allegation. You did not file an appeal with the DOL.

Based upon the NRC's investigation of these matters, it appears: 1) that you altered or attempted to substitute a urine sample submitted in response to a random test; and 2) that you were not terminated or otherwise discriminated against as a result of your raising concerns about the Callaway security program. Your attempt to subvert Callaway's FFD program is unacceptable behavior in the nuclear industry. The NRC and its licensees must be able to rely on the integrity and trustworthiness of employees, especially those in a supervisory capacity. At the same time, the NRC recognizes that you were terminated from your job at Callaway as a result of this incident, that you did not test positive for illegal drugs when you were tested immediately after this incident occurred, and that Callaway has not found evidence that you had previously attempted to subvert the testing program.

Based on these considerations, the NRC is issuing to you the enclosed Notice of Violation for your actions, which violated the NRC's rule prohibiting deliberate misconduct, 10 CFR 50.5. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation in the enclosure has been classified at Severity Level III to reflect the significance of attempting to subvert Union Electric's FFD program. While more significant enforcement action is not being taken against you as a result of the circumstances

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Q PDR

Mr. David A. Harris

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of this case, you should be aware that future violations of the deliberate misconduct rule may result in an order to prevent engaging in licensed activities at all NRC licensed facilities. A violation of this regulation may also lead to criminal prosecution.

You are required to respond to this Notice of Violation and should follow the instructions specified in the enclosed Notice, as applicable to your situation, when preparing your response. For example, where the Notice requires you to address your corrective actions, please address what actions you will take to assure compliance in the future should you be re-employed in the nuclear industry. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements should you find employment in NRC-licensed activities in the future.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter and enclosure with your address removed, and your response will be placed in the PDR after 45 days unless you provide sufficient basis to withdraw this letter. A copy also will be sent to Union Electric at that time.

If you have any questions, please contact Gary Sanborn, regional Enforcement Officer, at 817-860-8222 or 800-952-9677.

Sincerely,

  
L.J. Callan  
Regional Administrator

Enclosure: Notice of Violation

DISTRIBUTION: \*Hold for 45 days

w/o enclosure and w/home address removed

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\*Donald F. Schnell, Senior Vice President, Union Electric Company\*

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JMilhoan, DEDR (O-17G21)

JLieberman, OE (O-7H5)

LChandler, OGC (O-15B18)

JGoldberg, OGC (O-15B18)

FMiraglia, NRR (O-12G18)

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LCunningham, NRR (O-9D25)

KThomas, NRR (O-13E16)

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