



Department of Energy
Washington, DC 20585

June 14, 2005

Mr. Christopher P. Leichtweis
President and Chief Executive Officer
Safety and Ecology Corporation
SEC Business Center
2800 Solway Road
Knoxville, TN 37931

EA-2005-03

Subject: Preliminary Notice of Violation and Proposed Civil Penalty- \$55,000

Dear Mr. Leichtweis:

This letter refers to the recent investigation by the Department of Energy's (DOE) Office of Price-Anderson Enforcement (OE) involving a contractor employee protection issue at the Portsmouth site. 10 CFR 708, "DOE Contractor Employee Protection Program," has been designated a nuclear safety regulation by DOE and, thus, it is enforceable under the Price-Anderson Amendments Act [See 64 FR 12861, 12863 (1999)]. Pursuant to the structure of the regulation, a finding of contractor retaliation against an employee for raising nuclear safety issues by the DOE Office of Hearings and Appeals (OHA) or the U.S. Department of Labor (DOL) constitutes an independent per se nuclear safety violation.

In the case of Ms. Sue Rice Gossett (Case Number VBZ-0062), the complainant sought reinstatement and other remedies from Safety and Ecology Corporation (SEC) for violations of 10 CFR 708 associated with SEC's asserted retaliation against her (in this case dismissal) for raising nuclear safety concerns. Examples include stopping work performed without appropriate radiological personnel present, reporting that a radiological shipment lacked appropriate release papers, and reporting a personnel contamination. An OHA Hearing Officer released an Interlocutory Decision on May 8, 2002, and an Initial Administrative Decision (IAD) on August 23, 2002. The IAD held SEC in violation of 10 CFR 708 with respect to matters leading up to and including her dismissal. The decision set forth remedies required to rectify the violation, including reinstatement of Ms. Gossett. This decision was appealed to the OHA Director, who affirmed the findings of the IAD in a decision released on January 8, 2003. This decision was appealed by SEC to the U.S. District Court for the District of Columbia for a trial de novo. Motions for Summary Judgment were filed by both sides in the matter and in a decision dated October 15, 2004, Judge Bates issued an opinion granting respondents' Motion for Summary Judgment affirming the decision below.

In March 2005, SEC was notified that the OE was considering enforcement action in conformance with its mandate. SEC was invited to supplement the record, which included the public record in OHA and the U.S. District Court, with any material the company believed might impact an enforcement decision. Documents were received from the contractor on March 29, 2005. In its cover letter from counsel, SEC confirmed compliance with outstanding orders pertaining to this case. Further, counsel advised that SEC had reorganized senior management at the Portsmouth site, including replacement of the site manager.

The supplemental materials provided by SEC included six exhibits purporting to show SEC's pro-active efforts in the whistleblower area at the Portsmouth site with respect to issues raised by DOE contractor employees. At least some of the documents proffered do not appear on their face to address this issue. For example, Exhibits A, C, E, and F describe sexual harassment training at the site. Exhibit D constitutes training slides on whistleblower issues which were part of a series of presentations made by SEC counsel to senior managers in Knoxville, TN. It is not clear from the document whether anyone from the Portsmouth site attended this conference or what they did at Portsmouth upon their return from the conference. Further, it is noted that the minutes of focus group workshops addressing employee issues, including whistleblower issues, that were held at Portsmouth (Exhibit B) do not indicate that any meetings were held subsequent to June 2004. We also note that nothing was provided in the supplemental materials indicating that, following the Gossett case, any specific procedures, policies or processes were put in place to prevent retaliation against those raising safety concerns. In sum, these documents collectively have little probative value and, thus, fail to lead to the conclusion that mitigation is warranted in this case. They have, however, been incorporated into the record of this proceeding, which relies also on the testimony, documents and briefs constituting the record before the Office of Hearings and Appeals, as well as all relevant decisions and orders of OHA and the U.S. District Court.

In accordance with the "General Statement of Enforcement Policy," 10 CFR 820, Appendix A, the violation described in the Preliminary Notice of Violation (PNOV) has been classified as a Severity Level II problem. In determining the severity level of this violation, DOE considered the actual or potential chilling effect on nuclear safety arising from retaliation against an employee raising nuclear safety issues. 10 CFR 820, Appendix A, section VI (b), "Severity of Violations" states that violations of this type "...represent a significant lack of attention or carelessness toward responsibilities of DOE contractors for the protection of public or worker safety which could, if uncorrected, potentially lead to an adverse impact on public or worker safety at DOE facilities." The subject matter of this proceeding clearly fits into the category of a Severity II violation.

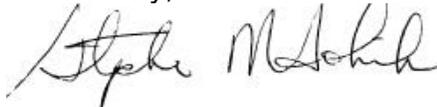
You are required to respond to this letter and to follow the instructions specified in the enclosed PNOV when preparing your response. Your response should document any additional specific actions taken to date that are not presently contained in the record. It is noted that a noncompliance report has never been filed in this case into the Noncompliance Tracking System (NTS). SEC should promptly file such a report identifying the root cause of this occurrence and the corrective actions already in place

or planned in order to reasonably assure that its workers are protected from discrimination of any kind when raising nuclear safety issues. Such corrective actions should, at a minimum, include the development and implementation of a procedure to assure compliance with the regulation and training of all personnel to the procedure. You should enter into the NTS (1) all actions you plan to take to prevent recurrence, and (2) the target completion dates of such actions. DOE will track your corrective action plan to assure compliance with this regulatory mandate.

After reviewing your response to the PNOV, including additional corrective actions entered into the NTS, DOE will determine what, if any, further action is necessary in this matter to ensure compliance with DOE nuclear safety requirements. In addition, DOE will continue to monitor your whistleblower protection program.

Under the Major Fraud Act, this matter is a proceeding relating to a violation of, or failure to comply with, a Federal regulation commenced by the United States. See 41 U.S.C. 256(k). Costs incurred in connection with such a proceeding are subject to reimbursement restrictions of the Major Fraud Act, implemented in 48 CFR 31.205-47. Thus, the costs incurred in connection with this matter should be tracked and segregated from other potentially allowable costs.

Sincerely,



Stephen M. Sohinki
Director
Office of Price-Anderson Enforcement

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Enclosure: Preliminary Notice of Violation

cc: J. Shaw, EH-1
R. Shearer, EH-1
A. Patterson, EH-1
M. Zacchero, EH-1
L. Young, EH-1
H. Wilchins, EH-6
Docket Clerk, EH-6
R. Loesch, EH-31
C. Anderson, EM-2
L. Vaughan, EM-3.2

G. Breznay, HG-1
F. Brown, HG-1
J. Freimuth, HG-40
G. Boyd, DOE-OR
R. Casteel, DOE-ORO PAAA Coordinator
W. Murphie, DOE PPPO
B. Gauthorp, DOE Portsmouth Counsel
D. Kozlowski, DOE Portsmouth PAAA Coordinator
R. Azzaro, DNFSB

Preliminary Notice of Violation
and
Proposed Imposition of Civil Penalty

Safety and Ecology Corporation
Portsmouth Gaseous Diffusion Project

EA-2005-03

The Price-Anderson Amendments Act of 1988, 42 U.S.C. 2282, provides authority to the Department of Energy (DOE) to impose civil monetary penalties on indemnified contractor organizations for violation of DOE nuclear safety regulations. 10 CFR 708 "DOE Contractor Employee Protection Program," which prohibits retaliation against contractor employees for, among other things, raising nuclear safety concerns, has been designated as a DOE nuclear safety rule, the violation of which subjects contractors to DOE's civil penalty authority. [See 64 FR 12861, 12863 (March 15, 1999)]. Civil penalties for violation of 10 CFR 708 may be imposed independent of any other penalties that may have been assessed by the DOE Office of Hearing and Appeals (OHA) or the U.S. Department of Labor (DOL) or any U.S. District Court.

The Complainant, Ms. Sue Rice Gossett (Gossett), filed a whistleblower complaint with DOE's Oak Ridge Operations Office on January 23, 2001, which forwarded the matter to OHA. The complaint alleged several infractions of the Whistleblower Rule. The OHA Report of Investigation indicates that Gossett made several disclosures protected under 10 CFR 708.5 and that she was terminated as a direct result of these disclosures. By Order dated August 23, 2002, OHA issued findings in the Gossett matter in which the petitioner's requests for relief against the Safety and Ecology Corporation (SEC), including a finding of retaliation, were granted. This included reinstatement, back pay and reimbursement of costs and expenses, including attorney's fees.

SEC filed an appeal to the initial OHA decision, and on January 8, 2003, the Initial Agency Decision was upheld in all respects. SEC filed for a trial de novo in the U.S. District Court in Washington, D.C. and that matter was resolved on October 15, 2004, when Judge Bates granted DOE's Motion for Summary Judgment in the matter.

In accordance with 10 CFR 820, Appendix A, "General Statement of Enforcement Policy," the violation is listed below.

Violation of 10 CFR 708

10 CFR 708.43 states that "DOE contractors may not retaliate against any employee because the employee (or any person acting at the request of the employee) has taken an action listed in section 708.5(a)-(c)." The DOE Office of Hearings and Appeals has found, in the case of Susan Rice Gossett, Docket Number VBA-0062, that a violation of 10 CFR 708 took place and ordered the contractor to implement remedies. The matters in controversy were issues of nuclear safety. Therefore, this finding of retaliation, per se, constitutes a nuclear safety violation.

This decision is based on the record of this case, including OHA Docket Number VBA-0062, the opinion of the Federal District Court in *Safety & Ecology Corporation v. U.S. Department of Energy, et. al.* (Civil Action No. 03-0747, October 15, 2004) and the March 2005 supplemental filing of the contractor with the Office of Price-Anderson Enforcement.

This violation constitutes a Severity II problem.
Civil Penalty - \$55,000

Pursuant to the provisions of 10 CFR 820.24 "Preliminary Notice of Violation," SEC is hereby required, within 30 days of the date of this Preliminary Notice of Violation (PNOV), to submit a written reply by overnight carrier to the Director, Office of Price-Anderson Enforcement, Attention: Office of the Docketing Clerk, EH-6, 270 Corporate Square Building, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-12190. Copies should also be sent to the Manager of the Portsmouth office and to the Assistant Secretary for Environmental Management. This reply should include the following: (1) admission or denial of the violation; (2) any facts set forth herein that are not correct; and (3) the reasons for the violations, if admitted, or if denied, the basis for denial. Corrective actions that have been or will be taken to avoid further violations should be set forth with target and completion dates in DOE's Noncompliance Tracking System. In the event the violations set forth in this PNOV are admitted, this Notice will constitute a Final Order in compliance with the requirements of 10 CFR 820.24.

Any request for remission or mitigation of the civil penalty must be accompanied by a substantive factual justification demonstrating extenuating circumstances or other reasons why the assessed penalty should not be paid in full. Within 30 days after issuance of the PNOV and civil penalty, unless the violations are denied, or remission or additional mitigation is requested, SEC shall pay the civil penalty of \$55,000 imposed under section 234a of the Atomic Energy Act by check, draft, or money order payable to the Treasurer of the United States (Account 891099) mailed to the Director, Office of Price-Anderson Enforcement, Attention: Office of the Docketing Clerk, at the above address.

If SEC should fail to answer within the time specified, the contractor will be issued an order imposing the civil penalty. Should mitigation of the proposed civil penalty be requested, SEC should address the adjustment factors described in section IX of 10 CFR 820, Appendix A.



Stephen M. Sohinki
Director
Office of Price-Anderson Enforcement

Dated at Germantown, MD
this 14th day of June 2005