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Description of document:	Closing document for twenty-six (26) Nuclear Regulatory Commission (NRC) Inspector General (OIG) investigations, 2012-2016
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RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2019-000076

1

RESPONSE
TYPE
☐

INTERIM

☒

FINAL

REQUESTER:

DATE:

FEB 22 2019

DESCRIPTION OF REQUESTED RECORDS:

The final document associated with each of the following NRC Office of Inspector General [OIG]'s investigations: C16 014, C13 022, C13 055, C14 007, C15 006, C15 007, and C15 038.

PART I. -- INFORMATION RELEASED

- ☐ The NRC has made some, or all, of the requested records publicly available through one or more of the following means: (1) <https://www.nrc.gov>; (2) public ADAMS, <https://www.nrc.gov/reading-rm/adams.html>; (3) microfiche available in the NRC Public Document Room; or FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>.
- ☒ Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (See Part I.D -- Comments) for a disclosure determination and direct response to you.
- ☐ We are continuing to process your request.
- ☒ See Part I.D -- Comments.

PART I.A -- FEES

AMOUNT

- ☐ You will be billed by NRC for the amount indicated.
- ☐ You will receive a refund for the amount indicated.
- ☐ Fees waived.

- ☒ Since the minimum fee threshold was not met, you will not be charged fees.
- ☐ Due to our delayed response, you will not be charged search and/or duplication fees that would otherwise be applicable to your request.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- ☐ We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification given to all requesters: it should not be taken to mean that any excluded records do, or do not, exist.
- ☒ We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☐ Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- ☒ You may appeal this final determination within 90 calendar days of the date of this response. If you submit an appeal by mail, address it to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Mail Stop T-2 F43, Washington, D.C. 20555-0001. You may submit an appeal by e-mail to FOIA.resource@nrc.gov. You may fax an appeal to (301) 415-5130. Or you may submit an appeal through FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>. Please be sure to include on your submission that it is a "FOIA Appeal."

PART I.C -- REFERENCES AND POINTS OF CONTACT

You have the right to seek assistance from the NRC's FOIA Public Liaison by submitting your inquiry at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>, or by calling the FOIA Public Liaison at (301) 415-1276.

If we have denied your request, you have the right to seek dispute resolution services from the NRC's Public Liaison or the Office of Government Information Services (OGIS). To seek dispute resolution services from OGIS, you may e-mail OGIS at ogis@nara.gov, send a fax to (202) 741-5789, or send a letter to: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. For additional information about OGIS, please visit the OGIS website at <https://www.archives.gov/ogis>.



**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST**

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PART I.D -- COMMENTS

We have considered the OIG's final report of investigation [ROI] as the responsive record for each of the specified OIG investigations. Please note that the ROI for one of the investigations, C13 055, is the subject of a previously submitted request from another requester that remains open in our office. Since you also requested this ROI in a request that you filed later than this one, which has the reference number NRC-2019-000182, we hope to be in a position to address this ROI in response to that request.

The ROIs for investigations C16 014, C13 022, C14 007, C15 006, C15 007, and C15 008 are enclosed.

Signature - Assistant Inspector General for Investigations or Designee



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2019-000076

DATE:

FEB 22 2019

PART II.A -- APPLICABLE EXEMPTIONS

Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to an Executive Order protecting national security information.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by the statute indicated.
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Other:
- ☐ Exemption 4: The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☐ The information is considered to be another type of confidential business (proprietary) information.
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Exemption 5: The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
- ☐ Deliberative process privilege.
- ☐ Attorney work product privilege.
- ☐ Attorney-client privilege.
- ☐ Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☒ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an open enforcement proceeding.
- ☒ (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☒ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ Other

PART II.B -- DENYING OFFICIAL

In accordance with 10 CFR 9.25(g)(1) of the U.S. Nuclear Regulatory Commission regulations, the official listed below has made the determination to withhold certain information, described below, responsive to your request.

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL
Rocco Pierri	Assistant Inspector General for Investigations	personally identifiable information (PII) of third parties; investigative techniques	Inspector General

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 30, 2016

MEMORANDUM TO:

Concur: Case Closed *[Signature]*
Joseph A. McMillan *[Signature]*
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)
Special Agent, (b)(7)(C)

SUBJECT:

CONCERNS PERTAINING TO UNITED STATES
NUCLEAR REGULATORY COMMISSION STAFF
HANDLING OF FUKUSHIMA RELATED FREEDOM OF
INFORMATION ACT REQUESTS (CASE NUMBER: 16-
014)

Allegation

The Office of the Inspector General (OIG), United States (U.S.) Nuclear Regulatory Commission (NRC), initiated this investigation based on an allegation from (b)(7)(C) that NRC had violated the Freedom of Information Act (FOIA) by either (1) over-representing to him the number of potentially releasable documents in response to his Fukushima-related FOIA request, or (2) not releasing these in response to prior, similar FOIA requests. (b)(7)(C) made this allegation after being asked by NRC's FOIA office to narrow the scope of his request because it would result in "hundreds or thousands" of responses. (b)(7)(C) questioned how the response could be so voluminous because a colleague of his made a similar request in 2011, which meant the items would already have been released. In addition, (b)(7)(C) said he searched in

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NRC's Agencywide Documents Access Management System (ADAMS) and identified only 10 records related to his FOIA request.

Potential violation of regulations relevant to this allegation is 5 CFR 2635 – Standard of Conduct

Findings

OIG did not identify evidence of misconduct by NRC's FOIA office in connection with (b)(7)(C) Fukushima-related FOIA request. OIG determined that (b)(7)(C) FOIA request was predicted to yield significantly more documents than the response to his colleague because (b)(7)(C) request encompassed information from March 11, 2011, to (b)(7)(C) whereas his colleague's request was made in April 2011, preceding numerous records created since that date. OIG learned that the FOIA office responded to (b)(7)(C) FOIA request initially with an interim response and that a full response was sent (b)(7)(C) on April 4, 2016.

OIG could not determine why (b)(7)(C) ADAMS search yielded so few responses, but learned that the NRC FOIA office created a publically available Web site in 2011 for "FOIA Related to Japan" so members of the public would not have to search in ADAMS or make a FOIA request for information released in prior Fukushima FOIA responses; the Web site contains FOIA responses through 2014.

Basis for Findings

On (b)(7)(C) submitted a FOIA request to NRC seeking all records (b)(7)(C) Tokyo Electric Power (TEPCO). According to (b)(7)(C) was a point of contact between NRC and other U.S. entities and TEPCO concerning Fukushima. On December 14, 2015, the NRC FOIA office emailed (b)(7)(C) requesting to narrow the scope of the request because the NRC program office expected there would be hundreds or thousands of records. (b)(7)(C) believed that this was contradictory to NRC's response to prior FOIA requests concerning Fukushima-related records. (b)(7)(C) specifically referenced a FOIA request from Geoff FETTUS, Natural Resources Defense Council, requesting "all non-exempt records in NRC's possession...communication between...NRC... and... Tokyo Electric Power Company." According to (b)(7)(C) FETTUS received far fewer documents to his request, which was made in March 2011.

According to (b)(7)(C) he did a content search in ADAMS for all documents containing (b)(7)(C) and the search returned a total of 10 records with 6 being FOIA responses – not "hundreds, or possibly thousands" as stated. (b)(7)(C) indicated that either the NRC program office was not being forthright concerning the inventory of unreleased records to/from (b)(7)(C) or the NRC "violated Federal FOIA law by failing to release some or all these records in response to numerous prior FOIA requests."

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(b)(7)(C) told OIG that his contention with the FOIA office is that he has submitted FOIA requests along with his colleagues for information concerning Fukushima or Oconee Nuclear Power Station, but when he receives the information it appears that he has received information that his colleagues have not. (b)(7)(C) did not believe that there was any intentional employee misconduct in the handling of his FOIA request. However, he did believe there were process issues that needed to be addressed. Specifically timeliness issues when responding to FOIA requests.

(b)(7)(C), Information Specialist, FOIA office, Office of the Chief Information Officer (OCIO), said she sent (b)(7)(C) an email on December 14, 2015, requesting that he narrow the scope of his initial request to make his request more manageable because it appeared that the information he was requesting was very voluminous and the program offices tasked indicated that there could be hundreds or possibly thousands, of emails on various topics. (b)(7)(C) said that (b)(7)(C) responded to the email stating he did not know how to narrow the scope and wanted to receive all documents to/from (b)(7)(C) between March 1, 2011, and (b)(7)(C).

(b)(7)(C) said that it was decided that the FOIA office would first provide (b)(7)(C) with an interim response due to the anticipated volume of the response, and the interim information would be sent to (b)(7)(C) on a compact disc. At the time of OIG's interview with (b)(7)(C) she was still processing the FOIA request. She said it was a complex request because it was voluminous and involved several program offices with a response due within 30 business days.

According to FOIA staff, due to the volume of requests received concerning Fukushima, a FOIA task force was created in 2011 to handle requests "for any and all..." records relating to Fukushima with a cut-off date for all requests on March 30, 2011. FOIA staff explained that multiple, similar FOIA requests concerning Fukushima were grouped together and handled under the first three initial requests, #118, #119, and #120, all made in March 2011. FETTUS' FOIA request (#189, April 2011) was encompassed in NRC's response to requests #118, #119, and #120.

(b)(7)(C) Government Information Specialist, FOIA Office, OCIO, stated that (1) numerous Fukushima-related records have been created since March 2011, which would account for the higher number of documents encompassed by (b)(7)(C) request, and (2) some documents considered sensitive in March 2011 and not released under FOIA, may no longer be considered sensitive. For example, (b)(7)(C) told OIG that the FOIA staff will verify if the requested information falls within a specific exemption because several of the FOIA requests concerning Fukushima were handled under B5 exemption and the B5 exemption may no longer apply. [Investigative Note: B5 exemptions are considered privileged communications.] Furthermore, (b)(7)(C) related that in 2011, the FOIA office created a public Web site with a separate link for all Fukushima responses so individuals would not have to access ADAMS and to give the public access to FOIA information concerning Fukushima without a FOIA request.

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(b)(7)(C) did not know why (b)(7)(C) only retrieved a minimal amount of documents in ADAMS when he did his content search for (b)(7)(C). She indicated that there are more than 200,000 documents in ADAMS concerning Fukushima. In addition, (b)(7)(C) said that (b)(7)(C) has the option to go to the publically available Web site in the "NRC's Library" (<http://www.nrc.gov/reading-rm/foia/japan-foia-info.html>.) to retrieve all documents related to Fukushima.

According to (b)(7)(C), NRC completed its response to (b)(7)(C) FOIA request on (b)(7)(C).

OIG provided information to (b)(7)(C) on the agency's process for dealing with Fukushima FOIAs. He expressed appreciation for the "insights" and said his concerns had been addressed.

Because OIG did not substantiate that FOIA staff violated any laws with the handling of the FOIA request, and the allegor stated that the concerns have been addressed, it is recommended that this case be closed to the files of this office.

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Distribution:
Case File 16-014

Magnum

OIG	OIG	Editor	(b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
6/30/16	6/30/16	6/30/16	6/30/16	6/30/16	6/30/16	7/5/16	7/6/16

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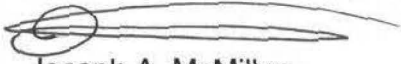


OFFICE OF THE
INSPECTOR GENERAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 21, 2016

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

FROM: 
Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: ALLEGED MISCONDUCT PERTAINING TO A (b)(7)(C)
(b)(7)(C) (OIG
CASE NO. 15-038)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation (ROI) pertaining to allegations that an Office of the Chief Information Officer (b)(7)(C) conduct has negatively affected the work environment and includes harassment of staff members, threats of retaliation, abusive actions, soliciting an NRC contractor to hire (b)(7)(C) and inappropriately withholding a (b)(7)(C) member's promotion.

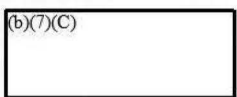
A copy of the ROI with exhibits is also attached for you to provide to the Office of the Chief Human Capital Officer.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the ROI nor its exhibits may be placed in ADAMS without OIG's written permission.

Attachments: Report of Investigation with Exhibits (plus one copy)

cc: (b)(7)(C) OGC with exhibits
(b)(7)(C), ADM (b)(7)(C) with exhibits

CONTACT: (b)(7)(C) OIG


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OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



Alleged Misconduct Pertaining to (b)(7)(C)

Case No. 15-38

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)

, Special Agent

(b)(7)(C)

, Team Leader

Joseph A. McMillan, Assistant Inspector General
for Investigations

Date

12/21/16

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STATUTES, REGULATIONS, AND POLICY

NRC Open Collaborative Work Environment (OCWE):

- OCWE is a work environment that encourages all employees and contractors to promptly raise concerns and differing views without fear of reprisal.
- It is an environment that encompasses the entire staff, where administrative and corporate support personnel, as well as members of the technical and legal staff, work together for mutual benefit and to achieve a common goal.
- It is an environment that encourages collaborative problem solving and decision making.
- It is an environment that values diverse views, alternative approaches, critical thinking, unbiased evaluations, and honest feedback on how decisions are made.
- It is an environment that encourages trust, respect, and open communication to foster and promote a positive work environment.
- It is an environment where employees are comfortable speaking up and sharing concerns and differing views without fear of negative consequences.

NRC Policy

NRC Management Directive 10.160, Open Door Policy

- A.** The U.S. Nuclear Regulatory Commission has an Open Door Policy that allows an employee to discuss any work-related issue or concern with any agency supervisor or manager beyond informal discussions with his or her immediate supervisor.
- B.** The NRC strives to establish and maintain an environment that encourages all employees to raise concerns and differing views promptly and without fear of reprisal. The free and open exchange of views or ideas, conducted in a non-threatening environment, provides a forum where concerns and alternative views can be considered and addressed in an efficient and timely manner. This environment leads to improved decision-making and supports the agency's safety and security mission.

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NRC Organizational Values: (ISOC CER):

Integrity

...in our working relationships, practices and decisions

...trustworthy, reliable, ethical, unbiased

Service

...to the public, and others who are affected by our work

...responsive, accountable, proactive

Openness

...in communications and decision-making

...transparent, forthright

Commitment

...to public health and safety, security and the environment

...dedicated, diligent, vigilant

Cooperation

...in the planning, management, and performance of agency work

...helpful, sharing, team-oriented, engaged

Excellence

...in our individual and collective actions

...high quality, continuously improving, self-aware

Respect

...for individuals' diversity, roles, beliefs, viewpoints, and work-life balance

...professional, courteous, objective, compassionate

5 CFR § 2635.502 - Personal and business relationships.

(a) Consideration of appearances by the employee. Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) Definitions. For purposes of this section:

(1) An employee has a covered relationship with:

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

18 USC § 1001 Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

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SUBJECT

(b)(7)(C)

Office of the Chief Information Officer (OCIO)
U.S. Nuclear Regulatory Commission (NRC)

ALLEGATION

The Office of the Inspector General (OIG), NRC, initiated this investigation based on an allegation received from the Office of the Chief Human Capital Officer (OCHCO) that (b)(7)(C) conduct has negatively affected the OCIO (b)(7)(C) (b)(7)(C) work environment and includes harassment of staff members, threats of retaliation, and abusive actions (i.e., throwing objects). Additionally, the allegation addressed (b)(7)(C) soliciting an NRC contractor to hire (b)(7)(C) and inappropriately withholding a (b)(7)(C) member's promotion.

FINDINGS

Issue 1: Harassment, Retaliation, and Abusive Management Behavior

OIG found that (b)(7)(C) behavior, as identified by the allegor and confirmed via staff interviews, is not found to be aligned with NRC's Open, Collaborative Work Environment or its values of Integrity, Service, Openness, Commitment, Cooperation, Excellence, and Respect. For example, OCIO employees have witnessed (b)(7)(C) throwing objects at his employees in meetings and verbally threatening to retaliate against employees. Furthermore, OCIO employees said (b)(7)(C) dominates conversations in meetings with his staff and other NRC colleagues and does not listen to others. OCIO employees also witnessed (b)(7)(C) "yelling" and "screaming" at his staff and colleagues; specifically, having open arguments with management and his peers in front of staff.

Issue 2: Conflict of Interest

OIG substantiated the allegation that (b)(7)(C) solicited an NRC contractor to consider hiring (b)(7)(C). The OIG investigation confirmed that (b)(7)(C) approached contractor (b)(7)(C) Company, regarding the possibility of (b)(7)(C) hiring (b)(7)(C). (b)(7)(C) acknowledged having a "casual conversation" with (b)(7)(C) regarding whether (b)(7)(C) had an opening for (b)(7)(C).

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(b)(7)(C) at another agency. (b)(7)(C) stated there were no inducements, promises, or threats made to (b)(7)(C) to secure employment for (b)(7)(C). OIG confirmed through electronic copies of email correspondence between (b)(7)(C) and (b)(7)(C) in which (b)(7)(C) provided his résumé to (b)(7)(C).

(b)(7)(C) told OIG he did not feel threatened by (b)(7)(C) to hire (b)(7)(C) however, he felt “uncomfortable” since the OCIO contract would be up for bid in the future and there could be a potential for violation to the code of ethics. (b)(7)(C) said he spoke with (b)(7)(C) “out of courtesy” and passed his résumé to his colleagues for consideration. (b)(7)(C) said he notified (b)(7)(C) (b)(7)(C) OCIO, of the situation, at which time (b)(7)(C) told (b)(7)(C) that (b)(7)(C) cannot hire (b)(7)(C) due to a contractual conflict of interest.

Issue 3: Delay in (b)(7)(C) Members Promotion without Justification

OIG was unable to substantiate the allegation that (b)(7)(C) unduly withheld or postponed an employee's grade-level promotion. The OIG investigation confirmed that (b)(7)(C) had discussed the promotion with his (b)(7)(C) and (b)(7)(C) and both supported delaying the promotion due to insufficient performance of the employee. Additionally, the (b)(7)(C) contacted OCHCO to request the delay of the employee's promotion.

BASIS FOR FINDINGS

Background

On February 25, 2015, (b)(7)(C) former Chief Information Officer (CIO), and (b)(7)(C) OCIO, nominated (b)(7)(C) to participate in the Continuous Diagnostics and Mitigation (CDM) program where he would serve on a Technical Evaluation Board (TEB) on a full time basis for a 3 month period (April 27, 2015 to June 4, 2015). According to (b)(7)(C) he reported to the General Services Administration headquarters to participate as a member of a TEB for the (b)(7)(C) (b)(7)(C) CDM Omnibus contract. (b)(7)(C) stated that the assignment was scheduled to last until June 4, 2015, but the assignment was completed early, and (b)(7)(C) returned to the NRC on May 15, 2015. During (b)(7)(C) detail, he designated (b)(7)(C) IT Specialist, OCIO, to act in the (b)(7)(C) role.

(b)(7)(C) and (b)(7)(C) agreed to keep (b)(7)(C) in the acting (b)(7)(C) role for developmental purposes despite (b)(7)(C) returning to NRC earlier than expected. On May 1, 2015, (b)(7)(C) made (b)(7)(C) aware of this matter and instructed him not to interfere with the (b)(7)(C)

On May 8, 2015, (b)(7)(C), OCIO, emailed OCHCO a list of special projects that OCIO proposed (b)(7)(C) work on upon his early return to NRC. According to (b)(7)(C) provided him with four complex projects to complete, but did not communicate the full scope of each project.

On June 1, 2015, (b)(7)(C) met with OCHCO to file a harassment claim against (b)(7)(C) and on June 18, 2015, he also filed an informal harassment claim against (b)(7)(C) with the NRC Office of Small Business and Civil Rights (SBCR). (b)(7)(C) harassment claims involved his early return to OCIO from his (b)(7)(C) detail and the decision to keep (b)(7)(C) acting in the (b)(7)(C) role in the interim period. (b)(7)(C) also noted in the claim filed with OCHCO that he saw “strong indicators of mismanagement” and he “sees [a] historical, visible and undeniable pattern of (b)(7)(C) treating myself and other (b)(7)(C)”

On June 24, 2015, (b)(7)(C) spoke with OCHCO regarding his interactions with (b)(7)(C) after (b)(7)(C) returned to OCIO from the (b)(7)(C) detail. (b)(7)(C) reported a list of concerns regarding (b)(7)(C) behaviors noting examples of feeling harassed, bullied, threatened and retaliated against as a result of assuming the acting (b)(7)(C) role. (b)(7)(C) also noted several other negative interactions (b)(7)(C) had with other (b)(7)(C) members.

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On July 16, 2015, OCHCO referred these allegations to the OIG.

Issue 1: Harassment, Retaliation, and Abusive Management Behavior

Interviews with (b)(7)(C) Staff

OIG interviewed five employees and one former employee who served under (b)(7)(C) supervision.

Interview of (b)(7)(C)

(b)(7)(C) told OIG that he and (b)(7)(C) were on “good terms” for 7 years, during the time (b)(7)(C) was his supervisor and prior to (b)(7)(C) being assigned acting (b)(7)(C) (b)(7)(C) during (b)(7)(C) detail to (b)(7)(C) informed (b)(7)(C) that he (b)(7)(C) would be serving as acting (b)(7)(C) while (b)(7)(C) completed his assignment at (b)(7)(C) stated he was supposed to serve as acting (b)(7)(C) (b)(7)(C) for 6 weeks. Upon (b)(7)(C) early return to NRC, OCIO management decided to allow (b)(7)(C) to continue serving as acting (b)(7)(C) the remainder of the six weeks while (b)(7)(C) was assigned to work on special projects.

After (b)(7)(C) completed the 6 weeks as acting (b)(7)(C) returned to the (b)(7)(C) role. Upon (b)(7)(C) reassuming the (b)(7)(C) role, (b)(7)(C) reported (b)(7)(C) abusive behavior. According to (b)(7)(C) (b)(7)(C) was “unhappy” with him being the acting (b)(7)(C) during which time he (b)(7)(C) developed new priorities for the (b)(7)(C) said, (b)(7)(C) threatened to lower his performance appraisal on two separate occasions while he was the acting (b)(7)(C) (b)(7)(C) explained that (b)(7)(C) told him he was “mad” at him and that his (b)(7)(C) feelings were going to be reflected in (b)(7)(C) performance evaluation. In another instance, witnessed by (b)(7)(C) IT Specialist, OCIO and (b)(7)(C) (b)(7)(C) told (b)(7)(C) he was going to be his “boss sooner or later” and he was going to “retaliate” against (b)(7)(C) by lowering his performance evaluation.

(b)(7)(C) told OIG that he would have probably “put up” with (b)(7)(C) behavior, but he viewed (b)(7)(C) as “threatening” his livelihood because of the threats to lower his performance appraisal. (b)(7)(C) said he feared that (b)(7)(C) would try to get him “fired” or put him on a “PIP” [Performance Improvement Plan]. Therefore, he decided to report his concerns regarding retaliation to OCHCO. (b)(7)(C) told OIG that his relationship with (b)(7)(C) had “slowly” gotten better since (b)(7)(C) has been back in the (b)(7)(C) position. (b)(7)(C) reflected back on (b)(7)(C) threats of retaliation, and felt while it was “not appropriate or right,” he (b)(7)(C) believed (b)(7)(C) was

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having an “emotional reaction” to not reassuming his (b)(7)(C) role upon his return. (b)(7)(C) added that he and (b)(7)(C) had a “nice” discussion about his performance appraisal, and felt everything was back to “normal” between the two. (b)(7)(C) told OIG that his appraisal was “fine” and “it was just like it has been for the last seven years.” (b)(7)(C) said he received a rating of 3.5 which is similar to what he received in previous years.

OIG confirmed that (b)(7)(C) performance was not lowered in FY15 following (b)(7)(C) threats and he received “Excellent” and “Outstanding” ratings.

(b)(7)(C) also recalled in the past few years (b)(7)(C) has thrown objects at him including pens, rolled up paper, etc., in a “laughingly or jokingly” manner. (b)(7)(C) said that while he “didn’t really like it,” the issue did not bother him enough to report it. However, (b)(7)(C) remembered one incident in which he had asked (b)(7)(C) not to throw an object (squishy balls) but shortly thereafter (b)(7)(C) threw a ball at (b)(7)(C) hitting him in the head. (b)(7)(C) said the ball did not hurt him, but he did not “like it.” (b)(7)(C) also explained that at the time of the incident they were not having a “heated” discussion, thus he was unsure as to what motivated (b)(7)(C) to throw the ball at him. (b)(7)(C) confirmed to OIG that he did not feel “threatened” or “physically hurt,” but he found (b)(7)(C) actions to be a “little demeaning” and “condescending.” (b)(7)(C) said he knows of (b)(7)(C) only throwing objects at him and recalled reporting the incident to OCHCO a couple of weeks after it occurred.

Lastly, (b)(7)(C) told OIG that (b)(7)(C) said (b)(7)(C) asked him to interview (b)(7)(C) for a job with his company. (b)(7)(C) said he told (b)(7)(C) not to interview or hire (b)(7)(C). (b)(7)(C) said he told (b)(7)(C) if (b)(7)(C) has a problem with his (b)(7)(C) instructions then he (b)(7)(C) can speak with him (b)(7)(C) because it could be a “quid pro quo or conflict of interest.”

(For further details, see Exhibits 1-2.)

Interview of (b)(7)(C)

(b)(7)(C) IT Specialist, OCIO, described his position as being a shared resource between (b)(7)(C) and (b)(7)(C), OCIO. (b)(7)(C) (b)(7)(C) said he has witnessed in a (b)(7)(C) meeting, (b)(7)(C) describing to his (b)(7)(C) including contractors, how he would like to take OCIO’s (b)(7)(C) out behind the building and beat him up. Moreover, (b)(7)(C) does not like to take instructions from (b)(7)(C) because (b)(7)(C) is a (b)(7)(C) and (b)(7)(C) is a (b)(7)(C) employee. (b)(7)(C) said he also overheard (b)(7)(C) and (b)(7)(C) yelling at each other about (b)(7)(C) being in the acting (b)(7)(C) role. (b)(7)(C) told (b)(7)(C) that (b)(7)(C) “can’t do the job.” (b)(7)(C) later heard (b)(7)(C) say in a meeting with

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(b)(7)(C) present that he “was going to hammer (b)(7)(C) on his yearly review.”

(b)(7)(C) told OIG that members of (b)(7)(C) including (b)(7)(C) and (b)(7)(C) are scared of (b)(7)(C). According to (b)(7)(C) (b)(7)(C) has “screwed both of them out of their step-up promotions at the proper time.” (b)(7)(C) added that he has aspiration to become a GG15 one day, however, he is nervous that (b)(7)(C) will “screw” him on that as well.

(b)(7)(C) told OIG he heard that (b)(7)(C) threw and hit (b)(7)(C) with a rubber ball in a meeting. Although, he did not witness it, (b)(7)(C) walked (b)(7)(C) over to OCHCO to report it. (b)(7)(C) said (b)(7)(C) has not thrown any objects at him. (b)(7)(C) said he has not witnessed (b)(7)(C) doing anything that he would consider to be illegal; however, (b)(7)(C) noted being an “asshole” is not illegal. (b)(7)(C) said that (b)(7)(C) has publicly humiliated him and other (b)(7)(C) members and provided the example of (b)(7)(C) severely criticizing one of (b)(7)(C) weekly reports in front of his (b)(7)(C) members. (b)(7)(C) said that (b)(7)(C) is very difficult to work with because he takes credit for everything that his subordinates do; however, he also finds fault in everything his subordinates do.

With respect to (b)(7)(C) and (b)(7)(C) relationship, (b)(7)(C) has noticed (b)(7)(C) and (b)(7)(C) interacting in a jocular manner. (b)(7)(C) described (b)(7)(C) and (b)(7)(C) relationship as “friendly” until (b)(7)(C) became the acting (b)(7)(C). (b)(7)(C) noticed a “sharp edge” between (b)(7)(C) and (b)(7)(C) after (b)(7)(C) remained acting (b)(7)(C) following (b)(7)(C) early return to NRC from his detail to (b)(7)(C). (b)(7)(C) said (b)(7)(C) staff members are “scared” of him (b)(7)(C) because of the way he has been treating (b)(7)(C) however, (b)(7)(C) does not feel threatened by (b)(7)(C).

(For further details, see Exhibit 3.)

Interview of (b)(7)(C)

(b)(7)(C) IT Specialist, OCIO, said he did not consider (b)(7)(C) a “good manager” in part, because he (b)(7)(C) dominates conversations, does not listen to staff input, and has an obvious disregard for the (b)(7)(C) [i.e. (b)(7)(C)] as evidenced by (b)(7)(C) bypassing (b)(7)(C) to solicit input from the CIO. However, (b)(7)(C) credited (b)(7)(C) as having the right skillset and occupational knowledge for his position.

(b)(7)(C) stated he is aware of staff complaining to (b)(7)(C) about (b)(7)(C) behavior and also provided examples involving (b)(7)(C) inappropriate behavior toward him (b)(7)(C).

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(b)(7)(C) recalled one incident where (b)(7)(C) called him a liar--as it related to a work assignment. (b)(7)(C) told (b)(7)(C) that he did not think that was "appropriate behavior" and he felt "uncomfortable." According to (b)(7)(C) apologized for his actions. (b)(7)(C) also remembered another incident where (b)(7)(C) animatedly made gestures resembling the playing of a violin as someone was complaining. (b)(7)(C) said he told (b)(7)(C) at that time that his (b)(7)(C) action was "inappropriate," and that such behavior made him (b)(7)(C) feel "insulted." (b)(7)(C) also indicated that he has not witnessed (b)(7)(C) exhibiting said behavior since confronting (b)(7)(C) (b)(7)(C) clarified that he did not have a problem with (b)(7)(C) and that (b)(7)(C) respects his opinions and values his insight.

(b)(7)(C) told OIG that when (b)(7)(C) went on his rotation to (b)(7)(C) he (b)(7)(C) sensed it was almost a "coup" attempt against (b)(7)(C) because staff started to complain directly to (b)(7)(C) about (b)(7)(C). Additionally, (b)(7)(C) said that (b)(7)(C) provided a list to (b)(7)(C) that he believed was information "...to put the dirty laundry about how (b)(7)(C) managed the group in front of (b)(7)(C)" (b)(7)(C) said he believed (b)(7)(C) requested this list of information from (b)(7)(C) staff. (b)(7)(C) said he has no idea what happened with this list of information.

(b)(7)(C) said that when (b)(7)(C) was the acting (b)(7)(C) he (b)(7)(C) and (b)(7)(C) had a lot of confrontations, and could hear them yelling through the door. However, he would put on his headphones so he could not hear their conversation. (b)(7)(C) also claimed to be unaware of (b)(7)(C) threatening to lower (b)(7)(C) performance appraisal.

(For further details, see Exhibit 4.)

Interview of (b)(7)(C)

(b)(7)(C) IT Specialist, OCIO, told OIG he witnessed (b)(7)(C) throwing a "stress ball" at (b)(7)(C) on several occasions in (b)(7)(C) meetings and it has always been a "joke." However, on one specific occasion (b)(7)(C) threw the "stress ball" at (b)(7)(C) and it hit (b)(7)(C) in the face. (b)(7)(C) said that he does not believe (b)(7)(C) intended to hit (b)(7)(C) in the face, nevertheless, (b)(7)(C) was "mad" about getting hit. (b)(7)(C) said (b)(7)(C) would throw the "stress ball" to get people to be quiet so he could talk and most people would catch it and remain quiet. However, he has noticed (b)(7)(C) throwing the "stress ball" at (b)(7)(C) more often because (b)(7)(C) would continue to talk when (b)(7)(C) would want him to be quiet. (b)(7)(C) added that (b)(7)(C) throws things, such as the stress ball at other (b)(7)(C) members as a joke and everyone is okay with it. (b)(7)(C) told OIG that (b)(7)(C) has thrown an object at him before and he was not offended by it.

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(b)(7)(C) said he heard a lot of people complaining about (b)(7)(C) taking control over meetings and talking over other people, as well as witnessing confrontations pertaining to the mentioned behaviors. (b)(7)(C) said he also witnessed (b)(7)(C) acting unprofessional and yelling in meetings. For example, when (b)(7)(C) was attending a meeting with the Office of Information Systems (OIS), members of OIS didn't agree with (b)(7)(C) on a subject matter and (b)(7)(C) got "mad and stood up and left." (b)(7)(C) also witnessed (b)(7)(C) arguing and yelling at (b)(7)(C) in a (b)(7)(C) meeting. However, (b)(7)(C) approached (b)(7)(C) after the meeting and addressed the issues. (b)(7)(C) told OIG he is not hesitant to voice his opinions or address any issues with (b)(7)(C) either. However, (b)(7)(C) said other employees may not have the courage to talk to him.

(b)(7)(C) told OIG that he was assigned as a project manager for a project involving the (b)(7)(C) contractors, and he had issues with (b)(7)(C) meeting the project requirements the last couple of years. (b)(7)(C) said he told (b)(7)(C) that he was having issues moving the project forward with the contractors and (b)(7)(C) said "I still need the lab to move forward...by the end of the contract" or your performance evaluation will be affected. (b)(7)(C) said that (b)(7)(C) and (b)(7)(C) were also working on the project but he believed the comment regarding the performance evaluation was directed at him because he was the "employee manager" for that project.

(b)(7)(C) said a lot of (b)(7)(C) members are not happy with (b)(7)(C) leadership. For example, (b)(7)(C) IT Specialist, OCIO, is not happy with (b)(7)(C) delaying his promotion and (b)(7)(C) is not happy with (b)(7)(C) hitting him with the stress ball. (b)(7)(C) said he is not happy about (b)(7)(C) continuously changing his mind on what is considered a priority and he believe it causes a lack of productivity. He also stated he is not "afraid" that (b)(7)(C) could impact his professional opportunities, because (b)(7)(C) does not have a good reputation within the NRC based on the aforementioned behaviors.

(For further details, see Exhibits 5-6.)

Interview of (b)(7)(C)

According to (b)(7)(C) IT Specialist, OCIO, (b)(7)(C) has a "unique set of moods" that could frequently change. For example, (b)(7)(C) continuously changes his mind regarding work products based on his mood. (b)(7)(C) said he (b)(7)(C) has even made changes to his own revisions. (b)(7)(C) said he has witnessed the following behaviors/moods from (b)(7)(C) (1) getting angry, (2) raising

his voice, (3) being sarcastic, (4) yelling/screaming at staff, and (5) throwing objects at staff. (b)(7)(C) witnessed (b)(7)(C) throwing "chalk and whatever he finds at (b)(7)(C) and being really angry with (b)(7)(C) further stated that (b)(7)(C) is the one always talking and (b)(7)(C) does not like when (b)(7)(C) speaks so he is always throwing things at (b)(7)(C) (b)(7)(C) has said in a (b)(7)(C) meeting to his staff "I see all of you guys and I don't see anybody smarter than I am" and calling his staff "stupid." (b)(7)(C) perceived these comments as saying everyone in the group is "dumb" or to humiliate a person or the staff.

(b)(7)(C) said that (b)(7)(C) has changed his behaviors some since meeting with OIG on a previous interview regarding (b)(7)(C) said (b)(7)(C) has since taken a couple of supervisory training courses and he has asked for feedback regarding his performance. However, (b)(7)(C) said based on past interactions with (b)(7)(C) he is "very conscious" regarding the type of feedback he gives (b)(7)(C) For example, (b)(7)(C) said he is not sure if (b)(7)(C) will penalize him for the type of feedback he gives him, because in the past his performance appraisal/evaluation would have been affected.

(b)(7)(C) told OIG he was hesitant to speak with (b)(7)(C) in the same manner he would with his colleagues in the past because of the issues he had with (b)(7)(C) delaying his promotion and he felt that (b)(7)(C) could stop him from getting his next grade. (b)(7)(C) explained when (b)(7)(C) exhibits "unusual" behavior(s), he (b)(7)(C) tries to divert the conversation to something more positive. For example, he has experienced (b)(7)(C) getting mad, sensitive, or frustrated about a topic of discussion and then proceeded to raise his voice or yell and say "shut up." (b)(7)(C) said (b)(7)(C) would also say the same negative comments over and over and he would get tired of hearing that so he would try to change the topic. (b)(7)(C) told OIG that it has also gotten to the point where (b)(7)(C) will "scream" at you and say something to the effect of "it's going to impact you." (b)(7)(C) said he took it as a threat on your "performance grading." (b)(7)(C) said (b)(7)(C) will make those comments to anyone in the group. (b)(7)(C) said he witnessed (b)(7)(C) threatening to lower (b)(7)(C) performance with a negative grade in a (b)(7)(C) meeting. However, (b)(7)(C) said he has not seen (b)(7)(C) exhibiting these behaviors lately.

(b)(7)(C) told OIG (b)(7)(C) could have an impact on his professional opportunities based on how (b)(7)(C) choose to document his performance appraisal. According to (b)(7)(C) based on (b)(7)(C) behaviors, if he likes you or not at the time, will possibly be reflected in the individual's performance appraisal or the recommendation he will give a potential employer.

As reported below, OIG's interview with (b)(7)(C) also addressed the issue of (b)(7)(C) delaying his (b)(7)(C) promotion.

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(For further details, see Exhibits 7-8.)

Interview of Former NRC Employee (b)(7)(C)

OIG interviewed former NRC OCIO employee (b)(7)(C)

(b)(7)(C)

(b)(7)(C) told OIG he was employed with the NRC (b)(7)(C) OCIO as the (b)(7)(C) Specialist from July 2008 to September 2014, under the supervision of (b)(7)(C)

(b)(7)(C) explained he left OCIO because he felt his opportunity for career advancement was limited and he did not agree with the OCIO management's implementation of the office's mission. (b)(7)(C) told OIG he wanted to work in industrial control systems security, and NIST offered him the perfect opportunity to fulfill that desire.

(b)(7)(C) said he did not leave OCIO because of (b)(7)(C) and he did not feel threatened or intimidated nor did he fear retaliation by anyone while working in OCIO. (b)(7)(C) further explained if he felt uncomfortable by any of (b)(7)(C) behaviors or actions he would address it directly with (b)(7)(C) and (b)(7)(C) was open to these conversations. (b)(7)(C) told OIG that he did not witness (b)(7)(C) bullying people.

(b)(7)(C) said that a lot of OCIO employees expressed their discomfort with (b)(7)(C) behaviors and mannerisms, such as, (b)(7)(C) demanding all the attention in meetings and not listening to others. (b)(7)(C) noticed that the OCIO group was easily threatened.

(b)(7)(C) said he witnessed a lot of "yelling and screaming" among the OCIO staff and noted two examples when (b)(7)(C) was having open arguments with management and his peers in front of staff. (b)(7)(C) added that while these examples were representative of the general atmosphere in OCIO he explained that (b)(7)(C) was one of the employees that was "hypersensitive" and therefore he (b)(7)(C) was likely uncomfortable addressing issues directly with (b)(7)(C)

(b)(7)(C) said he believes some OCIO employees were intimidated or afraid to go against (b)(7)(C) because (b)(7)(C) would find ways to exclude or dismiss an employee when they should have a voice in the matter. For example, in meetings related to projects, (b)(7)(C) said (b)(7)(C) has humiliated his employees, and noted the example of (b)(7)(C) humiliating/criticizing (b)(7)(C) in front of the contractors.

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(b)(7)(C) explained that he witnessed (b)(7)(C) throwing a "football flag" at his employees in a joking manner during a meeting with (b)(7)(C) said (b)(7)(C) would not toss the flag to hurt or induce physical harm, but the act could be interpreted as offensive by some people if they were sensitive to (b)(7)(C) (b)(7)(C) added that it was not a practice for staff to toss the flag back to (b)(7)(C) as (b)(7)(C) viewed this as questioning or undermining his authority.

(b)(7)(C) described (b)(7)(C) as acting with etiquette, politeness, and decency about 70 percent of the time. The other 30 percent of the time (b)(7)(C) behavior could be seen as overbearing, dominating, and intimidating.

(b)(7)(C) said that he did not have a special relationship with (b)(7)(C) but (b)(7)(C) would express to him that he felt threatened by his superiors, such as (b)(7)(C) and (b)(7)(C) (b)(7)(C) further stated that (b)(7)(C) felt that (b)(7)(C) was singling him (b)(7)(C) out because of his race. However, (b)(7)(C) said he told (b)(7)(C) he did not agree with him and did not see any evidence to support such claims.

(For further details, see Exhibit 9.)

(b)(7)(C) **Company Contractor**

Interview of (b)(7)(C)

(b)(7)(C) told OIG he recalled being present at a meeting in which (b)(7)(C) and (b)(7)(C) [acting (b)(7)(C)] were "butting heads" about what they viewed as priorities for the (b)(7)(C) and then (b)(7)(C) said to (b)(7)(C) and him "you better hope I don't retaliate... when I come back in the office." (b)(7)(C) indicated (b)(7)(C) was "pissed." (b)(7)(C) said from that moment he was "rattled as well." (b)(7)(C) also said (b)(7)(C) was also present for this meeting. (b)(7)(C) also witnessed (b)(7)(C) throwing a ball at (b)(7)(C) in a (b)(7)(C) meeting which hit (b)(7)(C) in the face and (b)(7)(C) later reported it to OCHCO.

(b)(7)(C) told OIG (b)(7)(C) made a comment in a (b)(7)(C) meeting to the effect that (b)(7)(C) is bigger than him (b)(7)(C) but he will get a few jabs in before (b)(7)(C) and then proceeded to call (b)(7)(C) a "dummy." (b)(7)(C) said he was neither threatened nor intimidated by the remarks or worried that (b)(7)(C) would physically hit him. However, it wasn't the first time (b)(7)(C) has made these type of comments to him. (b)(7)(C) said he would never jokingly make the mentioned comments or remarks to (b)(7)(C)

(For further details, see Exhibits 10-11.)

Interview of OCIO Employees and Contractor

OIG interviewed five other OCIO staff members and an NRC contractor who did not fall under (b)(7)(C) direct supervision, but had experience working with (b)(7)(C). Although none of them claimed to have previously experienced negative interactions with (b)(7)(C), five of them acknowledged hearing complaints from (b)(7)(C) staff regarding inappropriate work behaviors. Three of the staff members described (b)(7)(C) as “condescending” and “challenging” to work with, while another one stated (b)(7)(C) body language and comments can be interpreted as negative. One of (b)(7)(C) former employees said that (b)(7)(C) would call him “sneakers” or a “mole” because he would communicate with OIS; however, these comments did not bother him. In addition, while working for (b)(7)(C) this former staff member said he received a “very severe evaluation,” but because he did not consider it as “crossing the line” he did not report it the OIG.

(For further details, see Exhibits 12-17.)

Interviews of OCIO Management

Interview of (b)(7)(C)

(b)(7)(C) OCIO, confirmed (b)(7)(C) was one of his (b)(7)(C) who was asked by management to participate in a detail with (b)(7)(C). He also admitted receiving a lot of feedback from (b)(7)(C) staff about him “not empowering his people” and allowing them to grow. When (b)(7)(C) was offered the opportunity to participate in the (b)(7)(C) detail, (b)(7)(C) gave (b)(7)(C) the option to allow one of his staff members to act for him. (b)(7)(C) said when (b)(7)(C) chose (b)(7)(C) he (b)(7)(C) supported the choice. According to (b)(7)(C) was expected to remain as acting (b)(7)(C) for three months, which is a typical rotation period in the NRC. However, (b)(7)(C) returned early from the detail before the expected rotation period concluded.

(b)(7)(C) said when (b)(7)(C) returned, he began to (b)(7)(C) again. (b)(7)(C) made (b)(7)(C) aware of this, and told him (b)(7)(C) that he could not do his job. (b)(7)(C) and (b)(7)(C) agreed to keep (b)(7)(C) in the acting (b)(7)(C) role while (b)(7)(C) continued his rotation. (b)(7)(C) said that (b)(7)(C) was unhappy with the decision, but agreed to keep (b)(7)(C) as acting (b)(7)(C). In the interim, (b)(7)(C) tasked (b)(7)(C) to complete pending projects that were already on his performance plan.

(b)(7)(C) recognized when (b)(7)(C) returned from (b)(7)(C) relationship with (b)(7)(C) was “not pretty.” (b)(7)(C) also said that he even heard comments from his staff (and (b)(7)(C) himself) that (b)(7)(C) was going to retaliate against (b)(7)(C) through the performance appraisal process. However, (b)(7)(C) assured (b)(7)(C) that he will

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protect him, and advised him to report the issue to OCHCO. (b)(7)(C) said (b)(7)(C) and his (b)(7)(C) members made him aware that (b)(7)(C) was mistreating (b)(7)(C) while (b)(7)(C) was serving as acting (b)(7)(C). However, (b)(7)(C) noted, when (b)(7)(C) returned early from his (b)(7)(C) detail he (b)(7)(C) explained to (b)(7)(C) that (b)(7)(C) was to continue in the role of acting (b)(7)(C) for the remainder of the rotation. (b)(7)(C) stated that upon hearing this (b)(7)(C) called him (b)(7)(C) a “racist” and purportedly filed an Equal Employment Opportunity complaint. (b)(7)(C) added.

(b)(7)(C) stated he had heard from (b)(7)(C) that (b)(7)(C) and (b)(7)(C) did not want to report any negative interactions with (b)(7)(C) because (b)(7)(C) has a lot of contacts at (b)(7)(C) and it may hurt their professional aspirations.

(b)(7)(C) confirmed he told (b)(7)(C) he needed to change his management style because many of his (b)(7)(C) staff members were complaining. (b)(7)(C) told (b)(7)(C) he could not change if he did not know specific information on what was upsetting his staff. (b)(7)(C) also stated he heard staff assigned to other NRC offices describing (b)(7)(C) as being difficult to work with, disrespectful, disruptive, and overbearing.

(b)(7)(C) said he has tried to help (b)(7)(C) improve his management style; including working with SBCR in addressing (b)(7)(C) behavioral issues through a counseling memorandum. Remedial measures were also documented in a “Critical Feedback Memorandum” [counseling memorandum] that was coordinated through the Office of the Chief Human Capital Officer (OCHCO) and provided to (b)(7)(C) regarding his “interpersonal skills” and “lack of judgment.” (b)(7)(C) noted the memorandum also included examples of (b)(7)(C) inappropriate behaviors that contradicted NRC values. The memorandum documented (b)(7)(C) contumacy as he continued to engage in unacceptable behaviors that negatively impacted the OCIO organization. While the memorandum was not part of a disciplinary action, it was, nonetheless, coordinated through OCHCO. It should be noted also that OIG obtained from OCHCO a copy of the memoranda verifying (b)(7)(C) attempts to address (b)(7)(C) behavior through OCHCO.

(b)(7)(C) characterized (b)(7)(C) post-counseling behavior as “more friendly”, but still demonstrating a lack of respect for him (b)(7)(C) or (b)(7)(C). For example, (b)(7)(C) stated (b)(7)(C) told him he does not have to follow (b)(7)(C) directions because he (b)(7)(C) is a GG15, and (b)(7)(C) is an (b)(7)(C) employee. (Investigative Note: It is noted on the Office of Personnel Management website that (b)(7)(C) employees are in (b)(7)(C))

(b)(7)(C) acknowledged this makes it difficult for (b)(7)(C) to provide (b)(7)(C) with direction. (b)(7)(C) added that (b)(7)(C) also “struggles” in her working relationship with (b)(7)(C).

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(For further details, see Exhibits 18-19.)

Interview of (b)(7)(C)

(b)(7)(C) OCIO, statements provided during this OIG interview corroborated (b)(7)(C) testimony, and he provided additional information as follows.

(b)(7)(C) informed OIG that members of (b)(7)(C) reported to him their difficulty with understanding (b)(7)(C) expectations because of the frequency by which they change. (b)(7)(C) stated that the (b)(7)(C) members did not want to discuss these matter in a meeting that included (b)(7)(C) when he proposed for the (b)(7)(C) members to meet with him and (b)(7)(C) said that (b)(7)(C) was also aware of (b)(7)(C) members concerns.

(b)(7)(C) characterized (b)(7)(C) as a very “self-directed” and “goal oriented” individual and noted that he (b)(7)(C) does not feel physically threatened by (b)(7)(C). Nevertheless, (b)(7)(C) said that he has heard directly and indirectly from members of (b)(7)(C) that as soon as they (b)(7)(C) members] get promoted they will be looking for another position elsewhere.

(b)(7)(C) also admitted that there is “tension” between (b)(7)(C) and (b)(7)(C)

(For further details, see Exhibit 20.)

Interview of (b)(7)(C)

(b)(7)(C), OCIO, told OIG she has heard of negative behaviors by (b)(7)(C) towards his staff, but for the most part, she has not personally witnessed these behaviors. (b)(7)(C) described an incident where (b)(7)(C) (an OCIO IT Specialist--50/50 shared resource between (b)(7)(C) and (b)(7)(C)) was attending her (b)(7)(C) meeting in her office when (b)(7)(C) interrupted by pointing to (b)(7)(C) and saying “you going down to 25 percent with her.” (b)(7)(C) said she told (b)(7)(C) that they will need to speak with (b)(7)(C) about that, because it is not her understanding of how (b)(7)(C) time will be divided among (b)(7)(C) and her (b)(7)(C). After the meeting, (b)(7)(C) confirmed with (b)(7)(C) that (b)(7)(C) will remain a 50/50 shared resource between (b)(7)(C) and (b)(7)(C)

(b)(7)(C) added that she has an “adversarial relationship” with (b)(7)(C). (b)(7)(C) explained that in her experiences with (b)(7)(C) he tries to tell her how to do her job and likes to be in control over every meeting.

(For further details, see Exhibit 21.)

Interview of (b)(7)(C)

(b)(7)(C) was provided with a standard Administrative Warning in which he executed and provided substantially the following.

(b)(7)(C) confirmed that he is the (b)(7)(C) (b)(7)(C) OCIO [formerly CSO], and (b)(7)(C) five employees. (b)(7)(C) said his direct supervisor is (b)(7)(C) and he (b)(7)(C) is an (b)(7)(C) employee. However, (b)(7)(C) further stated “just for the record, (b)(7)(C) is a (b)(7)(C)”

(b)(7)(C) told OIG that he has a “reasonable working relationship” with (b)(7)(C) and (b)(7)(C) said that he thought there was a racial [quotient] in terms of engagement and agreement; however, he believed they have a “functional working relationship.” (b)(7)(C) further stated that OCIO has less than a “10 to 11” percent of African Americans representation in management.

(b)(7)(C) confirmed that he requested to participate in a detail with (b)(7)(C) that was projected to take place for 60 to 90 days, and he assigned (b)(7)(C) to be acting (b)(7)(C) because (b)(7)(C) had experience with (b)(7)(C). However, the detail with (b)(7)(C) finished early and he returned to NRC. When he returned he was not placed back in his (b)(7)(C) position and he was assigned to work on special projects. According to (b)(7)(C) was “still running (b)(7)(C)” which (b)(7)(C) viewed as a violation of the consolidated bargaining agreement (CBA). Therefore, (b)(7)(C) submitted a formal complaint to OCHCO but after a review OCHCO did not substantiate the complaint or (b)(7)(C) allegation that he was “unfairly treated.” [Investigative Note: OIG noted that (b)(7)(C) filed a harassment claim with OCHCO and SBCR; alleging harassment by (b)(7)(C). Both complaints regard (b)(7)(C) not being reassigned to his (b)(7)(C) role after returning early from the (b)(7)(C) detail.] (b)(7)(C) explained that his intent in filing complaints to OCHCO and SBCR was to obtain an apology from (b)(7)(C) and (b)(7)(C) for violating the CBA; however, (b)(7)(C) and (b)(7)(C) did not apologize.]

(b)(7)(C) explained that he has a “tenuous relationship” with (b)(7)(C), because it is (b)(7)(C) “way or the highway.” (b)(7)(C) questions the need for him to report to (b)(7)(C) who is (b)(7)(C) (b)(7)(C)

(b)(7)(C) told OIG he has a “positive working atmosphere” with (b)(7)(C), however, “she needs to work [on] her approach and look to ISOCER,” for guidance, which (b)(7)(C) attributed as causing tension between (b)(7)(C) and himself.

(b)(7)(C) told OIG that (b)(7)(C) became “very dictatorial” in the acting (b)(7)(C) role. (b)(7)(C) stated that he tried to “work and advise” (b)(7)(C) with assignments while (b)(7)(C) was the acting (b)(7)(C). (b)(7)(C) explained that he was not “OK” with (b)(7)(C) making decisions in the (b)(7)(C) role without his (b)(7)(C) input, because he (b)(7)(C) “would have to clean up what was left.” (b)(7)(C) said that (b)(7)(C) was concerned that he (b)(7)(C) “would seek revenge.” (b)(7)(C) further stated that it was evident that (b)(7)(C) took a “bullying” approach, and he (b)(7)(C) “will not be bullied.”

(b)(7)(C) said that (b)(7)(C) needed to learn “accountability and responsibility” in his role. (b)(7)(C) stated he has never “yelled at or abused” (b)(7)(C) and he has “very seldom” yelled at his employees. (b)(7)(C) admitted to throwing “soft...squeaky toys” at almost every employee (b)(7)(C) with the intent to get his employees to listen. (b)(7)(C) told OIG that these actions are not meant to be abusive or physically hurt or demean his employees; and that it is done “in fun.” (b)(7)(C) believes it is a harmless practice, and said that his employees can throw objects at him as well. (b)(7)(C) indicated that if his employees do not agree with this practice then they need to say something.

(b)(7)(C) told OIG he has “never” threatened to retaliate against an employee through their performance appraisal or any other means. (b)(7)(C) further stated that he has never said anything that could have been “misconstrued” or “misinterpreted” as threatening retaliation.

(b)(7)(C) admitted that he has made remarks that he would take (b)(7)(C) and (b)(7)(C) in the alley to beat them up. (b)(7)(C) said, if he were not Christian, he “might have a conversation” with the individuals mentioned above. (b)(7)(C) further stated that he is from (b)(7)(C) however, that is not who he is, and he would only resort to physical violence if he was defending himself. (b)(7)(C) confirmed that he has made comments like that “a number of times with no ill intent.”

With regard to the counseling memorandum initiated by (b)(7)(C) said the memorandum was vague and he never received anything from OCHCO stating that he abused his position or mistreated his employees.

OIG noted that (b)(7)(C) received an overall rating of “Fully Successful” for the (b)(7)(C) rating factors during FY15. Based on a review of (b)(7)(C) appraisal there were no comments reflective of the allegations and behaviors noted by staff in the previous testimony.

(For further details, see Exhibit 22.)

Issue 2: (b)(7)(C) Soliciting (b)(7)(C) Contractor to Hire (b)(7)(C)

Interview of (b)(7)(C)

(b)(7)(C) told OIG that (b)(7)(C) asked him to let him (b)(7)(C) know if there was a position for (b)(7)(C) with (b)(7)(C) and (b)(7)(C) provided (b)(7)(C) with a verbal background of (b)(7)(C) qualifications. (b)(7)(C) said that (b)(7)(C) approached him a couple of times later asking if he found any positions for (b)(7)(C) with his company. (b)(7)(C) responded “no,” and (b)(7)(C) said “okay.” According to (b)(7)(C) then provided him (b)(7)(C) with his (b)(7)(C) résumé. (b)(7)(C) said he took this situation as (b)(7)(C) trying to help (b)(7)(C) get a job.

(b)(7)(C) stated he contacted (b)(7)(C) “out of courtesy” and, in turn, (b)(7)(C) (b)(7)(C) also provided (b)(7)(C) with his resume through email. (b)(7)(C) agreed to pass his (b)(7)(C) résumé along to his colleagues for consideration. (b)(7)(C) noted he immediately made (b)(7)(C) aware of this matter. (b)(7)(C) told (b)(7)(C) he could not hire (b)(7)(C) for work at or outside of NRC. (b)(7)(C) told (b)(7)(C) that he showed (b)(7)(C) his (b)(7)(C) résumé and that (b)(7)(C) said he cannot hire (b)(7)(C) for a position in his company. (b)(7)(C) said that (b)(7)(C) indicated he was surprised (b)(7)(C) talked about the matter with (b)(7)(C) stated (b)(7)(C) did not follow up with him anymore about hiring (b)(7)(C) for a position within (b)(7)(C) company. (b)(7)(C) clarified he did not feel threatened by (b)(7)(C) (regarding the hiring of (b)(7)(C)), but that he felt “uncomfortable” because of potentially violating the code of ethics.

OIG confirmed email communication between (b)(7)(C) and (b)(7)(C) (b)(7)(C), dated on July 10, 2015, where, (b)(7)(C) stated: “I’ll start the process of seeing what (b)(7)(C) has internally and for other contracts as well as forward your résumé out to my colleagues. Obviously I don’t like promising anything the way the market is today, but I will definitely do my best.” In a July 17, 2015 email, (b)(7)(C) stated the following: “(b)(7)(C) Attached is a résumé from (b)(7)(C) I spoke with him and he’s definitely a sharp guy who’s eager to [learn] more in the networking field. (b)(7)(C) referred him to me and just asked if we could see if there was anything at all we could do. For obvious reasons, I told him that I’d get his résumé over to the (b)(7)(C) to see what we can do for him....”

A subsequent OIG interview of (b)(7)(C) revealed that following his first OIG interview, he reported (b)(7)(C) solicitation of job opportunities to SBCR. (b)(7)(C) told SBCR the nature of (b)(7)(C) treatment of his employees in OCIO, including himself and his

staff, and the hostile environment experienced in OCIO. (b)(7)(C) informed SBCR that (b)(7)(C) asked him to hire (b)(7)(C) for a position with his company. (b)(7)(C) further stated that his report to SBCR was “more or less” for his protection because he needed someone to advocate for him—especially since his company’s contract was coming to a close. (b)(7)(C) added. (b)(7)(C) also said that because he witnessed (b)(7)(C) using the word “retaliate” toward (b)(7)(C) in a previous meeting he was worried that (b)(7)(C) would also retaliate against him when his company had to re-compete for future contracts. (b)(7)(C) said irrespective of whether his company received a new contract with OCIO, he wanted to be able to “bid on it fairly.” (b)(7)(C) indicated that he was worried because (b)(7)(C) controls the contract funding and he (b)(7)(C) is involved with the selection process.

(For further details, see Exhibits 10-11, 22-24.)

Interview of (b)(7)(C)

(b)(7)(C) confirmed that (b)(7)(C) told him about (b)(7)(C) solicitation on behalf of (b)(7)(C). (b)(7)(C) stated he told (b)(7)(C) not to interview or hire (b)(7)(C) because it could be a “quid pro quo or conflict of interest.” (b)(7)(C) said (b)(7)(C) felt uncomfortable with this situation because he thought if he did not find a job for (b)(7)(C) would have an influence over the renewal of his contract.

(For further details, see Exhibits 1.)

Interview of (b)(7)(C)

When OIG questioned (b)(7)(C) about the allegations that he solicited a contractor to hire (b)(7)(C) for a position with their company, (b)(7)(C) replied “No, the allegations are groundless.”

(b)(7)(C) said that (b)(7)(C) is OCIO’s small business certified 8A contractor, and it has a number of contracts with other government agencies. (b)(7)(C) admitted that he had a “casual conversation” with (b)(7)(C) during which time he inquired if (b)(7)(C) had an opening for any contract positions at another agency for (b)(7)(C).

(b)(7)(C) confirmed that he did not “influence” (b)(7)(C) to speak with (b)(7)(C) regarding hiring him for a position with their company. (b)(7)(C) said that there was no indication that a quid pro quo arrangement or favoritism for future contracts was involved in the discussion with (b)(7)(C). (b)(7)(C) further clarified, “There was no appearance of my attempting to leverage this contract as a quid pro quo or anything associated with an ethical violation....” (b)(7)(C) also told OIG that people ask questions about jobs all the

time and he wanted to make it clear for the record that “there was no inducement, no promises of any type made. Period.” (b)(7)(C) confirmed that there were no threats made to (b)(7)(C) regarding finding a position for (b)(7)(C) with (b)(7)(C).

OIG noted that (b)(7)(C) asked if contractors can generate allegations to OIG.

OIG confirmed through electronic copies (obtained from OCHCO) of email correspondence between (b)(7)(C) and (b)(7)(C) in which the latter provided his résumé to (b)(7)(C).

(For further details, see Exhibits 22-23.)

Issue3: Delay in (b)(7)(C) Promotion without Justification

Interviews of OCIO Staff

Interview of (b)(7)(C)

In continuation of (b)(7)(C) sworn testimony above, (b)(7)(C) confirmed he was hired on August 26, 2013, by OCIO under the “career ladder planning” program. (b)(7)(C) said that since 2013, he has had issues with receiving promotions under (b)(7)(C) supervision and it was not always clear why the promotions were being withheld. One of the examples he recalled included (b)(7)(C) telling him that he was not approving his [August 26, 2014] promotion because of his writing ability. However, (b)(7)(C) also previously said he would not approve his promotion because he did not complete the OCIO Continuity of Operations Program (COOP) document that he was tasked. (b)(7)(C) explained (b)(7)(C) never provided “enough information” that would allow him to complete the OCIO COOP plan task.

(b)(7)(C) further stated that (b)(7)(C) indicated to him that he would conduct a re-appraisal at the end of October [2014] and approve (b)(7)(C) promotion. However, after three months (b)(7)(C) still did not receive his promotion. (b)(7)(C) also told OIG that (b)(7)(C) did not provide him with a mid-year review to further address what he (b)(7)(C) needed to work on in order to receive his promotion. Moreover, (b)(7)(C) said that while he was provided with the paperwork to sign for his mid-year review, there was not any written review posted in the system associated to his pending performance.

(b)(7)(C) said (b)(7)(C), OCIO, provided him with a pandemic plan template to assist him with completing a pandemic plan for OCIO. (b)(7)(C) said he did not want (b)(7)(C) writing the COOP plan for OCIO. (b)(7)(C) explained. Furthermore, (b)(7)(C) told (b)(7)(C) he never assigned (b)(7)(C) to task his staff with writing the COOP plan. (b)(7)(C) said he felt like he “got played for a year

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doing the COOP.” (b)(7)(C) said he not only completed the pandemic plan in less than a month, but (b)(7)(C) also approved it.

OIG confirmed through review of the Standard Form (SF) 52 for (b)(7)(C) promotion that (b)(7)(C) signed the form on January 29, 2015, five months after the initial proposed effective date for August 24, 2014. (b)(7)(C) was promoted from a GG11/02 to GG 12/01. (b)(7)(C) told OIG that he received his [GG 13/1] promotion on October 26, 2015.

OIG confirmed through personnel records review that (b)(7)(C) received an excellent rating for his FY 2014 performance appraisal, which was approved by (b)(7)(C). Consistent with the feedback, (b)(7)(C) gave (b)(7)(C) regarding the delay in his promotion, the appraisal stated, “There is room for (b)(7)(C) to improve his written communications and reporting skills. This has been discussed with the SITSO and (b)(7)(C) has taken efforts to focus on raising the quality of his written deliverables.” Nevertheless, it should be noted that all other written feedback indicated (b)(7)(C) was working at his grade level or above.

(For further details, see Exhibits 7-8 and 26.)

Interview of OCIO Management

Interview of (b)(7)(C)

(b)(7)(C) noted that (b)(7)(C) was one of the youngest employees in OCIO. (b)(7)(C) added that when (b)(7)(C) joined OCIO, he had communication issues. (b)(7)(C) said that (b)(7)(C) writing was getting “kicked back,” so he supported (b)(7)(C) working with (b)(7)(C) to improve his writing. (b)(7)(C) stated that (b)(7)(C) met with him and explained why he wanted to delay (b)(7)(C) first year promotion. (b)(7)(C) said he supported (b)(7)(C) decision.

(b)(7)(C) stated (b)(7)(C) communicated to him that (b)(7)(C) was not providing him good guidance or direction. (b)(7)(C) noted options on how (b)(7)(C) could address the issue including speaking with (b)(7)(C) directly, the three of them [(b)(7)(C) and (b)(7)(C)] meeting to discuss, or he (b)(7)(C) could report this matter to OCHCO.

(b)(7)(C) said he and (b)(7)(C) agreed to give (b)(7)(C) the promotion and he (b)(7)(C) processed the paperwork within 1 day. (b)(7)(C) stated (b)(7)(C) held up the paperwork for (b)(7)(C) promotion for a couple of weeks and (b)(7)(C) told (b)(7)(C) that the paperwork needed to be processed immediately because it affected (b)(7)(C) livelihood.

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OIG confirmed that (b)(7)(C) corroborated (b)(7)(C) statements concerning the delay of (b)(7)(C) promotion. OIG confirmed through email review that in August 2014, (b)(7)(C) corresponded with OCHCO requesting the delay of (b)(7)(C) ladder promotion until the end of the calendar year. It is also noted that (b)(7)(C) sent an email to OCHCO, dated January 27, 2015, stating: “in working closely with (b)(7)(C) after his 2014 appraisal, I believe that we closed most of the gaps that had us concerned with his ability to be able to perform at the higher grade. Please start the SF-50 process for us to grant his in-grade promotion.”

(For further details, see Exhibits 18, 20, and 25.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG that he hired (b)(7)(C) in 2013 and (b)(7)(C) had “no real experience that was usable,” and (b)(7)(C) was not operating at the level expected of his current grade. Consequently, (b)(7)(C) did not just supervise (b)(7)(C) but he mentored (b)(7)(C) throughout his (b)(7)(C) probationary period. (b)(7)(C) stated he “felt as though [he] would be abusing the system” if he signed off on (b)(7)(C) promotion on time, so he (b)(7)(C) delayed the promotion. (b)(7)(C) said that the basis for (b)(7)(C) promotion delay was based on (b)(7)(C) lack of performance. (b)(7)(C) said his management (b)(7)(C) agreed with his decision to delay (b)(7)(C) promotion and it was communicated to OCHCO. (b)(7)(C) told OIG he does not “believe he abused (b)(7)(C) or treated him unfairly...” in delaying the promotion. (b)(7)(C) further stated he has never abused any of his employees and that he try to accommodate his employees, with regard to work/life balance to the maximum extent possible.

(For further details, see Exhibit 22 and 25.)

Coordination with Department of Justice

OIG referred this investigation to the U.S. Department of Justice (DOJ), Public Integrity Section Criminal Division for criminal prosecution. DOJ declined prosecution in lieu of administrative action.

LIST OF EXHIBITS

1. Transcript, interview of (b)(7)(C) dated November 6, 2015.
2. Memorandum to File, Review of (b)(7)(C) FY15 Performance Appraisal, dated January 20, 2016, with attachments.
3. Transcript, interview of (b)(7)(C) dated October 27, 2015.
4. Transcript, interview of (b)(7)(C) dated January 12, 2016.
5. Transcript, interview of (b)(7)(C) dated October 29, 2015.
6. Transcript, interview of (b)(7)(C) dated September 28, 2016.
7. Transcript, interview of (b)(7)(C) dated October 27, 2015.
8. Transcript, interview of (b)(7)(C) dated September 26, 2016.
9. Transcript, interview of (b)(7)(C) dated June 21, 2016.
10. Transcript, interview of (b)(7)(C) dated August 28, 2015.
11. Transcript, interview of (b)(7)(C) dated November 10, 2015.
12. Memorandum of Interview, (b)(7)(C), dated September 1, 2015.
13. Transcript, interview of (b)(7)(C), dated October 8, 2015.
14. Transcript, interview of (b)(7)(C), dated October 29, 2015.
15. Transcript, interview of (b)(7)(C), dated November 2, 2015.
16. Transcript, interview of (b)(7)(C), dated January 21, 2016.
17. Transcript, interview of (b)(7)(C), dated January 21, 2016.
18. Transcript, interview of (b)(7)(C), dated December 7, 2015.
19. Memorandum of Interview, (b)(7)(C), dated November 4, 2015, with attachment.

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- 20. Transcript, interview of (b)(7)(C) dated December 4, 2015.
- 21. Transcript, interview of (b)(7)(C), dated November 2, 2015.
- 22. Transcript, interview of (b)(7)(C) dated January 13, 2016,
- 23. Memorandum to File, Review of an Email Thread Documenting Communications between (b)(7)(C) and (b)(7)(C) dated January 12, 2016, with attachments.
- 24. Memorandum of Interview, (b)(7)(C), dated November 6, 2015.
- 25. Memorandum to File, Review of Email Communication Documenting the Basis for any Delay in (b)(7)(C) and (b)(7)(C) Career Ladder Promotion, dated January 13, 2016, with attachments.
- 26. Memorandum to File, Review of (b)(7)(C) FY 14 and 15 Performance Appraisal, dated July 14, 2016, with attachments.

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OIG	OIG	(b)(7)(C)	OIG	OIG	OIG	OIG
(b)(7)(C)				J. McMillan	D. Lee	H. Bell
1/29/16	2/3/16	4/1/16	4/1/16	12/21/16	12/21/16	12/21/16

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**OFFICE OF THE
INSPECTOR GENERAL**

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

October 22, 2015

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

(b)(7)(C)

Special Agent, (b)(7)(C)

For:

SUBJECT:

**NRC STAFF INAPPROPRIATELY WITHHELD DOCUMENTS
PURSUANT TO FOIA PROCESS (OIG CASE NO. 15-07)**

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an allegation by (b)(7)(C) (b)(7)(C), that NRC staff had inappropriately withheld documents submitted by plant owners regarding fire protection and emergency planning. (b)(7)(C) later received these documents via a Freedom of Information Act (FOIA) request and determined that some of these previously withheld documents contained licensing information that should have been released to the public. (b)(7)(C) also later determined that numerous fire protection documents had been placed in ADAMS for public viewing despite an agency policy withholding such documents.

Finding

OIG found that the issues raised in the allegation suggested possible programmatic shortcomings relative to NRC's process of releasing and withholding certain information

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from the public, and that the Office of the Executive Director for Operations (EDO) has addressed some of the issues by withdrawing an order to withhold documents containing fire protection and emergency planning and response information. While neither the allegation nor the investigative work conducted indicated instances of employee misconduct, OIG found that these programmatic issues merit review by OIG Audits to determine whether an audit of the agency's process of withholding and releasing fire protection and emergency planning information to the public is warranted.

Basis of Findings

In 2004, the NRC Commission approved SECY 04-0191, which mandated that incoming fire protection and emergency planning documents are made nonpublic. This SECY was not intended to affect licensing actions related to these matters. As a result of this directive, however, various licensing actions that should be available for public review were also withheld. (b)(7)(C) believed this error was due to unintended misapplication of the SECY by NRC employees.

(b)(7)(C) voiced his concerns about the withholding of these documents to the Commission and EDO. The EDO responded by issuing SECY-15-0032, which withdrew the direction provided in the Staff Requirements Memorandum (SRM)-SECY-04-0191, "Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors from Public Disclosure," and SRM-SECY-05-0101, "Withholding from Public Disclosure Sensitive Unclassified Information Concerning Materials Licenses and Certificate Holders," which approved the withholding of fire protection and emergency planning and response information. The EDO mandated that staff should apply the NRC's Sensitive Unclassified Non-Safeguards Information (SUNSI) Policy, remaining consistent with its longstanding practice, to the review, release, and withholding of fire protection and emergency preparedness documents.

OIG interviewed (b)(7)(C) who stated that the issuance of this SECY resolved his concern about the release of licensing actions for public review. (b)(7)(C) had no issue regarding the withholding of fire protection and emergency planning documents as he agreed they may contain information sensitive to national security. (b)(7)(C) said he did not know of any directive from NRC staff to purposely hide licensing actions from the public, and did not believe there was any misconduct on the part of employees. However, (b)(7)(C) opined that there was a systematic flaw that prevented the release of licensing actions and, in some instances, allowed fire protection information to be released despite the blank withholding policy instituted in 2004.

A memorandum to the Assistant Inspector General for Audits referring this matter will be made to suggest an audit of NRC's process regarding the release and withholding of fire protection and emergency planning information.

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Because this investigation did not identify indicators of employee misconduct, it is recommended that this case be closed to the files of this office.

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Distribution:

File Location:

(b)(7)(C), (b)(7)(E)

Case No.

Historical File

Magnum

OIG/AIGI	OIG/AIGI	(b)(7)(C)		OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)					J. McMillan	D. Lee	H. Bell
(b)(7)(C)	10/15/15	(b)(7)(C)	10/22	10/22/15		10/23/15	10/29/15

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INSPECTOR GENERAL

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UNITED STATES**

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

July 6, 2015

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

FROM:

(b)(7)(C)
Team Leader, (b)(7)(C)

SUBJECT:

NRC STAFF WERE INFLUENCED BY UBS INVESTMENT
RESEARCH TO MAKE SAFETY AND POLICY DECISIONS
BASED ON FINANCIAL CONCERNS (OIG CASE NO.
14-07)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was initiated based on information provided from a petitioner during a 10 CFR 2.206 Petition Review Board (PRB). During the PRB, Petitioners accused the Commission and the NRC staff of wrongdoing by allegedly providing predecisional information to UBS Investment Research, and being influenced to make policy and safety decisions based on financial concerns associated with installing hardened, filtered vents on Mark I & II Boiling Water Reactors (BWR). The PRB transcript shows that one petitioner specifically referenced a February 20, 2013, report by UBS anticipating that NRC was "likely not to require filtered vents given their material expense early next week." The petitioner noted that the article was issued after researchers from UBS visited with NRC regarding critical pending issues confronting the nuclear corporations for which UBS monitors investments.

Findings

OIG did not develop evidence to substantiate that the NRC Commission or staff provided predecisional information to UBS Investment Research or were improperly influenced to make decisions concerning containment venting for Mark I and II BWRs. Although two UBS staff members visited the Commission the day before UBS published an article predicting the outcome of an upcoming Commission vote on the subject, there

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is no indication that the prediction (which was partly correct and partly incorrect) was based on anything other than speculation. Moreover, OIG did not identify any fluctuations in industry stock values or trading that suggest a basis in non-public NRC information.

Basis for Findings

Background

OIG learned that on November 26, 2012, NRC issued and made publicly available SECY-12-0157, "Consideration of Additional Requirements for Containment Venting Systems for Boiling Water Reactors with Mark I and Mark II Containments (REDACTED VERSION)." The paper was provided in response to Commission direction in the staff requirements memorandum (SRM) for SECY-11-0137, "Prioritization of Recommended Actions To Be Taken in Response to Fukushima Lessons Learned," dated December 15, 2011.

The stated purpose of SECY-12-0157 was to provide the Commissioners with "information, options, and a recommendation from NRC staff to impose new requirements for containment venting systems for boiling-water reactors (BWRs) with Mark I and Mark II containments." SECY-12-0157 provided four options:

1. Reliable hardened vents (status quo): Continue with the implementation of Order EA-12-050¹ for reliable hardened vents to reduce the likelihood of core damage and failure of BWR Mark I and Mark II containments and take no additional action to improve their ability to operate under severe accident conditions or to require the installation of an engineered filtered vent system.
2. Severe accident capable vents order: Upgrade or replace the reliable hardened vents required by EA-12-050 with a containment venting system designed and installed to remain functional during severe accident conditions.
3. Filtered vents order: Design and install an engineered filtered containment venting system that is intended to prevent the release of significant amounts of radioactive material following the dominant severe accident sequences at BWRs with Mark I and Mark II containments.
4. Severe accident confinement strategy: Pursue development of requirements and technical acceptance criteria for confinement strategies and require licensees to justify operator actions and systems or combinations of systems to accomplish the function and meet the requirements.

¹ On March 12, 2012, NRC issued order EA-12-050, "Order To Modify Licenses With Regard to Reliable Hardened Containment Vents" to all operating BWR licensees with Mark I and Mark II containments.

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A cost/benefit analysis included in SECY-12-0157 focused on options 2 and 3; the estimated total cost per plant for option 2 was approximately \$2 million and the estimated total cost per plant for option 3 was approximately \$15 million. A footnote to the publicly available Enclosure 1 of the SECY paper stated, "Some stakeholders have noted that an estimate of \$15 million seems low and that the price could be factors of 2 or 3 higher." Cost/benefit estimates for option 1 (status quo) and 4 were not provided; the SECY stated that option 4 "involves a longer-term effort, and the associated regulatory analysis, which includes a cost/benefit assessment, would be developed once the approach and possible regulatory changes are better defined."

SECY 12-0157 reflected the staff's recommendation that the Commission approve option 3 to require installation of an engineered filtered containment venting system for BWRs with Mark I and Mark II containments.

On March 19, 2013, the Commission issued an SRM describing its approval of option 2. The SRM also conveyed that the Commission approved the development of technical bases and rulemaking for filtering strategies with drywell filtration and severe accident management of BWR Mark I and II containments and directed that the technical bases and rulemaking should consider option 3 and option 4 from SECY 12-0157.

OIG's review of the Commission Voting records showed that the then-Chairman and four Commissioners unanimously supported option 2, and that the four Commissioners supported exploration and implementation of option 3 and 4 elements through rulemaking. (The Chairman approved options 2 and 3, and the consideration of option 4.) OIG noted that the voting records, which reflect each Commission member's explanation for his/her vote, indicate that all votes were based on safety related concerns and do not appear to suggest that any votes were motivated inappropriately by financial concerns.

Media Reports by UBS Research and Others

OIG reviewed the article referenced in the allegation, published on February 20, 2013, and titled "In Search of Washington's Latest Realities (DC Fieldtrip Takeaways)," published by UBS Investment Research. A disclaimer on the UBS report states that UBS "does and seeks to do business with companies covered in its research reports. It says, "As a result, investors should be aware that the firm may have a conflict of interest that could affect the objectivity of this report. Investors should consider this report as only a single factor in making their investment decision."

OIG noted that while the article correctly predicted that the NRC might not impose the most costly option that was described in SECY-12-0157, it also incorrectly anticipated an industry proposed alternative (with as yet unknown cost and scope information) would be selected:

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We look for a decision from the NRC next week on *[sic]* proposal to require the installation of hardened filtered vents on all Mark I and II units. We increasingly believe the NRC may *not* require these added precautions given the added stress this places on the incumbent portfolio, with NRC staff initially estimating these retrofits would cost \$15 Mn, however, multiple other sources estimate the true cost of such installation costs could be up to \$40 Mn per unit. Given the qualitative factors cited as part of the cost-benefit analysis used to justify the retrofits . . . it appears the effort does not meet the usual rigor of a quantitative cost-benefit analysis used to justify such investments. . . . Rather, we anticipate the industry's proposed alternative for a more selective "FLEX" approach will be adopted (the exact cost and scope of this proposal remains unclear).

OIG notes that the cost information presented in the article aligns with publicly available information in SECY-12-0157, and there is no indication that the article's predictions that NRC "may not require these added precautions" and that "the industry's proposed alternative...will be adopted" are based on other than speculation.

OIG reviewed NRC visitor logs and determined that two analysts for UBS Research visited NRC for a Commission visit on February 19, 2013 (the day before UBS issued the February 20, 2013, article described above). OIG learned there are no official procedures or requirements to document visitors who meet with Commissioners, and there is no record of who the UBS analysts met with or what was discussed during the visit.

(b)(7)(E)



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(b)(7)(E)

Because OIG did not identify evidence suggesting that (1) the speculation in the UBS Research article was based on predecisional information, (2) the Commission's vote on SECY-12-0157 was improperly influenced by industry financial concerns, or (3) there was questionable relevant stock trading in connection with this matter, it is recommended that this case be closed to the files of this office.

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(b)(7)(C), (b)(7)(E)

Distribution

Case File 14-07x

Historical File

Magnum

Editor (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
7/2/15	7/6/15	7/6/15	7/6/15	7/6/15	7/7/15

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001



OFFICE OF THE
INSPECTOR GENERAL

June 10, 2015

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

FROM

(b)(7)(C)
(b)(7)(C)
Team Leader, (b)(7)(C)

SUBJECT:

ALLEGED WRONGFUL DESTRUCTION OF FORMER
CHAIRMAN JACZKO'S OFFICIAL NRC RECORDS
(OIG CASE NO. 13-022)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), received information from (b)(7)(C) that (b)(7)(C) (b)(7)(C) Administrative Assistant (AA), NRC Commission Support Staff, disclosed to him that she was tasked by (b)(7)(C) for former NRC Chairman Gregory JACZKO to assist in the processing of the former Chairman's office files for transfer and permanent retention. The processing of the files began in the summer and ended in the fall of 2012. (b)(7)(C) allegedly instructed (b)(7)(C) and (b)(7)(C) another Commission Support Staff AA, to go through former Chairman JACZKO's files and remove and destroy all records containing staff recommendations. (b)(7)(C) was concerned because JACZKO's files were official files and considered permanent records, as the files of an individual Commissioner's office must be maintained as a separate category of agency records. (b)(7)(C) advised that 70 boxes had been processed and transferred to Archives, and 50 boxes remained at the time he reported the allegation to OIG. (b)(7)(C) began reviewing the remaining boxes and found very few documents that contained staff recommendations. He also reviewed NRC Office of the Secretary (SECY) papers for 2009-2010, but could not find any with staff positions. (b)(7)(C) was concerned that agency retention rules were not followed.

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OIG later learned that (b)(7)(C) for former Chairman JACZKO, may have also been involved in allegedly tasking (b)(7)(C) to destroy records.

Potential violations relevant to this allegation are Title 18 of the U.S. Code Section (§) 2071, Concealment, Removal, or Mutilation Generally,” and Management Directive (MD) 3.53, Part 4, NRC Records and Document Management Program.”

Findings

OIG did not identify evidence indicating that official agency records were destroyed or that two Commission support staff members were directed by staff of former NRC Chairman Gregory JACKZO to destroy official agency records. Neither of the two support staff members clearly recalled what instruction they received, or who gave the instruction; however, in response to the instructions, one said she removed only routing slips from the files and the other said she removed only duplicate documents.

Basis of Findings

Agency Guidance

NRC's main records management policy and guidance documents include Management Directive 3.53 (MD 3.53), “NRC Records and Document Management Program,” and NUREG-0910, “NRC Comprehensive Records Disposition Schedule.” MD 3.53 is the agency policy that addresses the National Archives and Records Administration and General Services Administration records management requirements for Federal agencies, while NUREG-0910 details the disposition schedules for various types of records. MD 3.53 and its associated handbook describe agency policy regarding records management and maintenance, including the responsibilities over documents in NRC's custody, contractor documents, and overall maintenance and upkeep of records in NRC's possession.

In accordance with the Federal Records Act, MD 3.53 defines Federal records as “All books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law.” MD 3.53, Part IV, Procedures for Managing Commissioner's Records and Papers, explains that office files of an individual Commissioner are those materials that relate to agency business and, as a collection, are unique to that Commissioner's office. Except for personal papers, the office files are agency records and include the following material:

- Notes, memoranda, correspondence, and other papers written by or exchanged between a Commissioner and members of his or her personal staff, or written by or exchanged between members of the Commissioner's staff without any circulation outside the Commissioner's office (i)

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- Notes, memoranda, correspondence, or other papers received by the Commissioner or his or her staff from another Commissioner or a member of the other Commissioner's staff that were not circulated to other Commissioners' offices (ii)
- Notes, memoranda, correspondence, or other papers from Commission-level offices or Executive Director for Operations (EDO) staff offices, from Congress, from other Government agencies, or from members of the public that were not circulated to other Commissioners' offices (iii)
- Transcripts of telephone conversations relating to agency business and, if circulated to members of the Commissioner's staff, copies of agency records on which the Commissioner makes his or her own notations (iv)

Office files do not include SECY papers or formally tracked memoranda (COMSECY papers). (b)

The files of an individual Commissioner's office must be maintained as a separate category of agency records.

Extra copies of agency records are commonly regarded as nonrecord material and may be disposed of without reference to the requirements of the Federal Records Act.

The "NRC Comprehensive Records Disposition Schedule" (CRDS) (NUREG-0910) provides the authorized disposition for all NRC records. Each record schedule has been approved by the appropriate NRC officials and the Archivist of the United States. According to NUREG-0910, Part 7, "Records of the Office of the Commission," the following records are considered permanent and transferred to National Archives and Records Administration (NARA) by NRC when 20 years old:

"Copies of all outgoing correspondence and reports prepared by the individual commissioners...."

"Notes, memoranda, correspondence, copies of e-mail, and other papers accumulated in the offices of the Chairman or the Commissioners that are written by or exchanged between a Commissioner and members of his/her personal staff or written by or exchanged between members of the Commissioner's staff, received by the Commissioner or his/her staff from another Commissioner or member of his/her staff that were not circulated to other Commissioner offices, received from any other NRC source, from Congress, from other government agencies, or from members of the public that were not circulated to other Commissioner offices, and transcripts of telephone conversations relating to agency business, and copies of agency records on which Commissioners make their own notations. Office files contain original documents

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received by the Commissioner, and may contain copies of records maintained by other NRC offices when germane to the Chairman's or Commissioners' subjects, projects or actions to which the files pertain. However, Office Files of the Chairman and Commissioners do not include extra unannotated copies of records maintained as part of the Commission's Official Files."

"Schedules, logs, diaries, and similar records documenting meetings, appointments, telephone calls, trips, visits, and other activities by the Chairman and Commissioners while serving at NRC, excluding materials determined to be personal."

[Investigative Note: Routing slips were not listed in NUREG-0910, as a document requiring permanent retention, or any retention.]

Interview of NRC Senior Managers on Agency Guidance

(b)(7)(C)
(b)(7)(C) Office of the General Counsel (OGC), NRC, informed OIG that the Federal Records Act requires NRC to retain all records used in the agency decisionmaking process and agency actions. MD 3.53 provides instructions on how to implement the Federal Records Act. (b)(7)(C) considered most Commissioner records as permanent records. (b)(7)(C) told OIG that if a Commissioner's records are placed in NRC's ADAMS then one could destroy the paper documents.

(b)(7)(C) SECY, told OIG that each Commission office operates differently with regard to official recordkeeping. He stressed that MD 3.53 needs to be rewritten for clarification. He met with (b)(7)(C) OGC, and Commission staff regarding what records should be retained and to provide clarification on the requirements. He informed OIG that SECY retains Commission vote sheets, SECYs, and Staff Requirement Memoranda (SRMs); however, SECY does not have access to the documents that the Commission staff generates within their own offices. It is these internal documents, which SECY does not maintain, that the Commissioner and his/her staff have to keep.

Interview of Office of Commission Support Staff

(b)(7)(C) told OIG that sometime in July 2012, during the closeout of former Chairman JACZKO's office, staff began packing up Chairman JACZKO's records and files and placing them in an empty office. (b)(7)(C) could not recall if (b)(7)(C) or (b)(7)(C), or both, directed her to review Chairman JACZKO's SECY, Correspondence, and Commission Action Memoranda (COMSECY) files and pull the action routing slips that transmit the voting document to the appropriate Chairman's staff advisor for action, and throw them away, which she did. She said she worked on the files for about 1 day, and (b)(7)(C), a floater, was assigned to assist. (b)(7)(C) gave (b)(7)(C) the same instructions she received, which was to pull the routing slips from the files. Subsequently, (b)(7)(C) had a conversation with (b)(7)(C) about

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recordkeeping. He informed her that anything that the Chairman writes to his/her advisors or the advisors write to the Chairman with regard to a voting matter is considered an agency record and has to be kept. She specifically recalled pulling and destroying the routing slips, and did not believe she destroyed anything else. She said she did not destroy handwritten notes from the Chairman's advisors.

(b)(7)(C) told OIG that she vaguely recalled (b)(7)(C) or (b)(7)(C) former Commission AA (no longer an agency employee), asking her to go through Chairman JACZKO's files. She could not recall details of the instructions, and was uncertain as to what she did during the review of the files. Initially, she said she thought she had been tasked to look in the files for copies of handwritten personal notes on a voting matter and give them to (b)(7)(C) or someone else in the Chairman's office. However, later during the interview, she recalled that she had been tasked to remove the routing slips and give them to (b)(7)(C). She told OIG that she went through about 30 files and removed copies of documents but left the originals.

Interview of (b)(7)(C)

(b)(7)(C) said that as part of the closeout process for former Chairman JACZKO's office, all of his office's files were put in archive boxes by she, (b)(7)(C) and two other former staff employees (not (b)(7)(C) or (b)(7)(C)), and they made a list of every document placed in each box. (b)(7)(C) said she flipped through the files looking for security and personnel information as that did not go to the Archives, and pulled out copies of what were already official documents. She said she did not go through it so much as to just list what was in the boxes. (b)(7)(C) said she did not get "great instructions" (on records retention) so they erred on just keeping everything. They turned over approximately 150 boxes. While (b)(7)(C) recalled that JACZKO's office had routing slips, she did not recall tasking anyone to remove them or (b)(7)(C) tasking someone to do it. (b)(7)(C) thought the four individuals on the closeout team were all careful, and said they tried to compare notes to say, "Make sure you keep this. Make sure you keep that." In response to specific questions from OIG asking if she or anyone else willfully destroyed original agency documents from the files, (b)(7)(C) responded "No."

Interview of (b)(7)(C)

(b)(7)(C) stated that she started closing out the former Chairman's office when he left in July of 2012. (b)(7)(C) stated that (b)(7)(C) and other former staff members (not (b)(7)(C) or (b)(7)(C)) of Chairman JACZKO's staff created an index of what was boxed of the former Chairman's records. She said they put personally identifiable information (PII), such as travel records, into a separate box. (b)(7)(C) stated she was told from SECY that anything that SECY keeps, they did not have to keep, as SECY has the official agency records. Therefore, those duplicative items were placed in a "burn bin" or recycling bin. The only thing they wanted, she said, was anything that

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had Chairman JACZKO's writing on it. She said, "If it was a SECY paper that came up and he scribbled on it, it didn't matter that it was a SECY paper that they already had. They wanted it." (b)(7)(C) stated she never destroyed any document that had writing on it from the former Chairman.

(b)(7)(C) did not recall (b)(7)(C) having any role in the closing out of JACKZO's office records other than "boxing things up." (b)(7)(C) said that in terms of reviewing boxes and files, none of the AAs did it. However, (b)(7)(C) said that (b)(7)(C) is a really good employee and she would have had no problem if she knew that (b)(7)(C) told (b)(7)(C) (a floater employee) to pull the pink (routing) slips as they were putting files into boxes. (b)(7)(C) attributed the allegation against her to "a miscommunication" during the "craziness that was the last couple of weeks of the Chairman being there." She said that she could understand that because of the "stress" and "chaos," someone might have thought "they were given more of an instruction than they were or that it meant more than it did."

Referral to the Department of Justice

OIG discussed this investigation with the Department of Justice, Office of Public Integrity. The office subsequently declined to prosecute due to inability to identify whether any official record documents were destroyed, lack of intent, and willfulness.

Closure Justification

Because OIG did not identify criminal or employee misconduct in connection with the alleged destruction of records from the office of former Chairman JACZKO, it is recommended that this case be closed to the files of this office.

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Distribution:

File Location:

(b)(7)(C), (b)(7)(E)

Case No.13-22

Historical File

Magnum

OIG/AIGI	(b)(7)(C)	OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. M. Millan	D. Lee	H. Bell
	6/10/15	6/10/15	6/10/15		

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[Signature]



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2019-000182

1

RESPONSE
TYPE



INTERIM



FINAL

REQUESTER:

DATE:

04/23/2019

DESCRIPTION OF REQUESTED RECORDS:

The "final report, report of investigation, closing memo, or other conclusory document" from 27 enumerated Office of Inspector General (OIG) investigations, not otherwise addressed in response to your request (NRC-2019-000076) for several of the same OIG investigations.

PART I. -- INFORMATION RELEASED

- ☐ The NRC has made some, or all, of the requested records publicly available through one or more of the following means: (1) <https://www.nrc.gov>; (2) public ADAMS, <https://www.nrc.gov/reading-rm/adams.html>; (3) microfiche available in the NRC Public Document Room; or FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>.
- ☒ Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (See Part I.D -- Comments) for a disclosure determination and direct response to you.
- ☒ We are continuing to process your request.
- ☐ See Part I.D -- Comments.

PART I.A -- FEES

AMOUNT

\$0.00

- ☐ You will be billed by NRC for the amount indicated.
- ☐ You will receive a refund for the amount indicated.
- ☐ Fees waived.

- ☐ Since the minimum fee threshold was not met, you will not be charged fees.
- ☐ Due to our delayed response, you will not be charged search and/or duplication fees that would otherwise be applicable to your request.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- ☐ We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- ☒ We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☒ Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- ☐ You may appeal this final determination within 90 calendar days of the date of this response. If you submit an appeal by mail, address it to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Mail Stop T-2 F43, Washington, D.C. 20555-0001. You may submit an appeal by e-mail to FOIA.resource@nrc.gov. You may fax an appeal to (301) 415-5130. Or you may submit an appeal through FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>. Please be sure to include on your submission that it is a "FOIA Appeal."

PART I.C -- REFERENCES AND POINTS OF CONTACT

You have the right to seek assistance from the NRC's FOIA Public Liaison by submitting your inquiry at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>, or by calling the FOIA Public Liaison at (301) 415-1276.

If we have denied your request, you have the right to seek dispute resolution services from the NRC's Public Liaison or the Office of Government Information Services (OGIS). To seek dispute resolution services from OGIS, you may e-mail OGIS at ogis@nara.gov, send a fax to (202) 741-5789, or send a letter to: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. For additional information about OGIS, please visit the OGIS website at <https://www.archives.gov/ogis>.



**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST**

2019-000182

1

RESPONSE
TYPE



INTERIM



FINAL

PART I.D -- COMMENTS

In response to your previous request, NRC-2019-000076, we addressed six reports of investigation (ROI's) from OIG investigations, C13-022, C14-007, C15-006, C15-007, C15-038 (which had been mistakenly typewritten as C14-038 in your request but you confirmed you meant C15-038), and C16-014, which you also asked for in this request. As such, we have excluded them from the scope of this request.

In addition, both of your requests asked for the ROI from OIG investigation C13-055. As we informed you in our response to NRC-2019-000076, that ROI (as well as the entire contents of the investigation file) remains the subject of a pending FOIA request submitted by another requester. At this time, we are awaiting a response from one more program office as to certain information contained in the investigative file, including the ROI itself. Moreover, the ROI for C15-017 also contains information tied to this pending referral. So as not to further delay our response, we are issuing this interim response. The investigations to which these ROI's pertain are as follows:

C12-056	C15-021	C15-037
C12-080	C15-024	C15-040
C13-051	C15-026	C15-041
C13-052	C15-027	C16-004
C14-011	C15-030	C16-011
C15-003	C15-031	C16-015
C15-019		

We will issue a second, and final, response once FOIA processing of the ROI's for OIG investigations C13-055 and C15-017 has been completed. Thank you for your patience.

Signature - Assistant Inspector General for Investigations or Designee

Rocco J. Pierri

Digitally signed by Rocco J. Pierri
Date: 2019.04.23 12:32:58 -04'00'



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

PART II.A -- APPLICABLE EXEMPTIONS

Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to an Executive Order protecting national security information.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by the statute indicated.
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Other:
- ☐ Exemption 4: The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☐ The information is considered to be another type of confidential business (proprietary) information.
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Exemption 5: The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
- ☐ Deliberative process privilege.
- ☐ Attorney work product privilege.
- ☐ Attorney-client privilege.
- ☐ Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☒ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an open enforcement proceeding.
- ☒ (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☒ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ Other

PART II.B -- DENYING OFFICIAL

In accordance with 10 CFR 9.25(g)(1) of the U.S. Nuclear Regulatory Commission regulations, the official listed below has made the determination to withhold certain information, described below, responsive to your request.

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL
Rocco Pierri	Assistant Inspector General for Investigations	personally identifiable information of third parties and investigative techniques	Inspector General



OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

March 30, 2016

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, (b)(7)(C)

SUBJECT: POTENTIAL LACK OF OVERSIGHT OF WATER LEAKAGE
AND SAFETY CULTURE AT PALISADES NUCLEAR
POWER PLANT BY REGION III (OIG CASE NO. 12-056)

Allegation

The Office of Inspector General (OIG) U.S. Nuclear Regulatory Commission (NRC), initiated an investigation to address concerns over two specific issues raised by members of the public and Congress regarding safety concerns at the Palisades Nuclear Plant in Covert, MI.

Issue 1: Safety Injection Refueling Water Tank (SIRWT) Leakage

The first issue addressed in the investigation involved the NRC response to the May 2011 discovery of a water leak in the control room at Palisades. This ultimately resulted in a June 2012 forced maintenance outage to inspect and repair leakage that was found to originate from the SIRWT. At the time of the forced outage, it was alleged that the tank had been actively leaking for 1 year and the leak had grown in volume to approximately 31 gallons per day. The investigation addressed concerns that NRC had

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"tolerated," or otherwise inadequately responded to, a leak with the potential to affect safety related control room components.

Issue 2: Safety Culture Concerns

The second issue addressed in this investigation involved the adequacy of the NRC staff's handling of identified safety culture concerns among Palisades' employees. These issues came to light in relation to two incidents: a 2010 incident in which an on duty plant operator left the control room without proper relief or supervisory permission, and a September 2011 direct current power loss to safety related components resulting in a temporary emergency shutdown of the reactor. Among other remedial measures taken after these incidents, safety culture surveys by an outside vendor were ordered. NRC staff were alleged to have attended a meeting where safety culture survey results were presented, but neglected to obtain relevant documentation or otherwise address the plant's poor safety culture survey results.

Findings

Issue 1: SIRWT Leakage

OIG found no evidence that the NRC staff failed to act appropriately or in a timely manner when dealing with the May 2011 discovery of leakage from the SIRWT affecting the Palisades control room. NRC staff were notified on the day the leak was first detected in the control room, promptly relayed this information to regional management, and initiated regular monitoring of licensee followup. OIG found no evidence that water had leaked into the control room in sufficient quantities to cause safety related equipment failures. The NRC staff learned that the "catacombs" area, below the tank and above the control room, in which the leakage apparently originated, had not been inspected in over 20 years, and issued a green finding addressing this issue in August 2011.

OIG found that the roof above the control room was repaired in June 2011 and this stopped the leakage within the control room. However, low rate leakage within the catacombs continued at a rate of 300-500 milliliters (equivalent to 0.079 - 0.132 gallons or 10-16 fluid ounces) per day, and was monitored periodically by the licensee and NRC staff. OIG found that, under the Technical Specifications of the plant, low rate leakage would not, in and of itself, require that the SIRWT be declared inoperable and the reactor shut down. OIG and the NRC Office of Investigations (OI) developed information that between June 2011 and February 2012, the licensee staff inaccurately told NRC staff that their findings were "inconclusive" as to whether the source of the leakage was the SIRWT or other sources, such as rain. The licensee acknowledged in February 2012 that the source of leakage was the SIRWT and initiated repairs when the plant was in a scheduled shutdown condition in April 2012. OI's investigation disclosed

evidence that the licensee's ambiguity as to the source of leakage was to ensure that no unscheduled shutdown would occur prior to the scheduled April 2012 outage.

OIG found that after the tank was repaired during the scheduled outage and refilled in June 2012, a new, higher rate leak began, initially estimated at 5 gallons a day, and increasing to the 31 gallon level referenced in the allegation predicated this case. This leakage was found to have occurred due to welding problems and stresses on the tank bottom associated with the April 2012 repairs. This new leakage affected a wider portion of the catacombs area as well as resuming within the control room. Again, NRC staff responded promptly to confirm that the leakage did not affect safety related equipment. NRC staff also took steps to ensure that appropriate industry codes were applied to the analysis of this leakage to calculate how it affected operability, and NRC prevailed in a disagreement with the licensee over the setting of an appropriate, code-supported upper limit of 34.8 gallons per day on acceptable leakage for operability. On June 12, 2012, the licensee determined that the leakage rate had reached that limit, rendering the tank technically inoperable and requiring a forced shutdown. During the resulting shutdown and repair outage, the NRC sent a regional inspector with specialized expertise in metallurgy to Palisades to observe the resulting repairs to the SIRWT tank, which reduced but still did not eliminate all leakage. NRC issued a second green finding for the SIRWT leakage, for the licensee's failure to adequately evaluate the SIRWT leakage and for initially seeking to set a less conservative limit on acceptable leakage, based upon that inadequate evaluation.

The NRC also issued a July 2012 Confirmatory Action Letter (CAL) to the licensee in connection with continuing water leak issues from the SIRWT. This CAL required the licensee to institute continuous monitoring of the leakage, with shutdown required if leakage exceeded set levels, and provided the licensee with specific requirements for the repair of the tank and associated supporting structures. The CAL was closed out after additional 2013 repairs during which the licensee replaced large sections of the tank bottom and support structures beneath the SIRWT and above the control room. No further SIRWT leakage incidents have been documented since 2013.

ISSUE 2: Safety Culture Concerns

OIG found no evidence that the NRC failed to act appropriately or in a timely manner when dealing with the safety culture issues disclosed in 2010 and 2011 at Palisades. The underlying incidents that gave rise to the safety culture concerns at the plant were addressed by NRC consistently with regulatory requirements. The 2010 incident was addressed in part through NRC issuance of a confirmatory order, one of whose requirements was a survey by an outside safety culture contractor. The results of this survey were shared with NRC after it was completed in April 2012. Resident inspectors were given access to the full report to review in a licensee controlled setting and were provided with copies of the executive summary of the report. NRC staff engaged in

continued monitoring of safety culture issues, as demonstrated by the history of followup inspections between 2012 and 2014, which showed improvements in safety culture among Palisades technical and operations staff.

Basis for Findings

ISSUE 1: SIRWT Leakage

OIG review of the Palisades Technical Specifications specifically addressing the SIRWT disclosed that the standard of operability for the tank is its ability to perform its safety related function, which is to hold 200,000 to 250,000 gallons of water at specified ranges of temperature and boron concentration. The SIRWT's Limiting Condition for Operation (LCO) states, "The SIRWT shall be OPERABLE" and defines operability in terms of boron content of tank water, temperature of tank water, and volume of water contained. The LCO sets surveillance requirements, and defines time limits from detection for the correction of non-conforming conditions to maintain operability. If that correction cannot be accomplished within the time limit, the tank must be declared inoperable and the plant must shut down. The time limit is 8 hours for correction of boron levels, and 1 hour for correction of any other factor such as the temperature or volume of water contained in the tank. Surveillance requirements specify that temperature is to be checked on a 24-hour basis, and the volume and borate concentration is to be checked on a 7-day basis. A fully "leak proof" condition is not required; however, leakage of a high enough volume would prevent the tank from holding the required volume of water over the required time periods. It was noted that for the leakage that did occur in this case, applicable industry code requirements were used to identify an appropriate limit on leakage rates, finalized in a July 2012 CAL at 38 gallons per day, above which the tank would be declared inoperable because the volume of water contained could not be reasonably maintained as required in the Technical Specifications.

OIG learned through interviews of Palisades' resident inspectors and Region III management that NRC staff were notified immediately of the control room leak on May 18, 2011, and that the control room leak ceased after the licensee completed repairs to the control room roof in early June 2011. However, related licensee inspections in June 2011 identified signs of continuing leakage within the catacombs area, not affecting the control room, originating from piping in that area. That piping was identified as "Class 2" under the American Society of Mechanical Engineers (ASME) codes¹ for piping systems and vessels (such as water tanks), and thus subject to periodic inspection under 10 CFR § 50.55(a). Licensee staff told the residents that during catacombs repairs in

¹ ASME codes are detailed, proprietary standards utilized by industry and regulators to guide the testing and inspection of specified types of engineering systems. Section XI of ASME Boiler and Pressure Vessel (B & PV) Code includes requirements for the inspection of tanks and pipes.

1990, the licensee had permanently "blocked off" access to the area and declared it "inaccessible," despite the presence of the Class 2 piping within. The NRC issued a green (minor) finding for this failure to inspect Class 2 piping. Review of this inspection report disclosed that the finding was green because the leak "did not result in a loss of function for the impacted components," i.e., the leak did not render the SIRWT inoperable. After this, the licensee included the catacombs area in its regular inspection program. This is consistent with the NRC Reactor Oversight Process as referenced in Inspection Manual Chapter 2515, which states, "minor findings shall be reported to the licensee for action in accordance with the licensee's corrective action program. Licensees are expected to track and trend minor findings and issues as stated in their program."

OIG learned that from June 2011 on, the resident inspectors and Region III were briefed weekly on the above, ongoing leakage within the catacombs area. This leak was - monitored and measured throughout the period at rates between 300 and 500 ml per day, which the senior resident inspector compared to a "soda can" when interviewed. This catacombs leak was scheduled for repair during the plant's next scheduled refueling outage in April 2012. The senior resident inspector told both OIG and OI that the licensee continued throughout 2011 and into early 2012 to assert to NRC staff that their followup findings were "inconclusive" as to whether the leak source was the SIRWT. In addition, OIG and OI found that information about the September 2011 identification of short-lived radioactive isotopes in water residue from the leakage by an independent testing service was not provided to NRC staff until February 2012. Such information, if provided, would have indicated clearly that the leakage was from the tank, as opposed to rainwater, which would be clear of radioactive isotopes. A Region III manager indicated to OIG and OI that he and the resident inspectors had not been provided with complete information about the leakage by licensee personnel, using the term "daisy chaining" to refer to the licensee's handling of relevant condition reports, to indicate that the licensee, rather than correcting issues, would close an issue by incorporating it serially into new reports to artificially extend the time requiring correction of the issue. OI developed evidence that the licensee had engaged in this practice in order to minimize the possibility of an unscheduled shutdown and maintain uncertainty as to the existence of a SIRWT leak.

OIG learned that consistent with the licensee's intended schedule, during the scheduled April 2012 refueling outage, repairs were conducted on the SIRWT, with a specific nozzle flange identified and addressed as the source of the prior leakage. However, after the tank was refilled in June 2012, a new, higher rate leakage, initially estimated at 5 gallons a day, began, which was later attributed to welding problems and flexing stresses associated with the attempted repairs and refilling of the tank. This leakage affected a wider portion of the catacombs area and resumed within the control room and a nearby hallway. Catch basins were set up to contain the leakage. The new leak in the control room was reported to the senior resident inspector, who responded to the

control room and observed repairs to the roof within the space. According to the senior resident inspector, he checked the control room and found no leakage onto equipment or water residue on any equipment. He checked the area over the next few days and never witnessed any additional leakage into the control room area.

The licensee had intended to restart the plant after the tank was refilled. The senior resident inspector questioned the licensee's plans to go into the scheduled startup with leakage of, at that time, approximately 5 gallons per day coming from the SIRWT. The senior resident inspector, in cooperation with his branch chief and Region III staff, sought to assess the leakage and set a maximum acceptable leakage limit triggering declaration of inoperability and plant shutdown, which would be derived from the applicable ASME code case. The licensee provided an evaluation to NRC that set forth an erroneously calculated proposed limit at 130 gallons per day, with which the senior resident inspector disagreed as not sufficiently conservative. NRC prevailed upon the licensee to use a significantly more conservative limit of 34.8 gallons per day. On June 12, 2012, the licensee determined that the leakage rate had reached the limit and conducted a forced shutdown. During the outage, the NRC sent a regional inspector with specialized expertise in metallurgy to Palisades to observe the resulting repairs to the SIRWT, which reduced but did not eliminate the leakage. The NRC issued a second green finding in August 2012 for the licensee's failure to adequately evaluate the SIRWT leakage and for seeking an insufficiently conservative limit, based upon that inadequate evaluation. In addition, the NRC issued a July 2012 CAL requiring the following:

- 1) Daily measurement of the leakage, and periodic assessment and calculation of growth trends in the leakage until the adverse condition of the tank was corrected.
- 2) Declaration of inoperability of the SIRWT and plant shutdown upon the detection of any leakage exceeding 38 gallons per day (increased slightly from the June 2012 set limit), or upon the detection of growth trends indicating that the leakage would reach the set maximum level within 48 hours and notification to NRC of any changes in these threshold requirements.
- 3) A 26-month time limit from time of identification for repair of any active leakage of the SIRWT.
- 4) Continued inspections of the concrete support structure above the control room, control room hallway, and the concrete support structure ceiling in order to ensure the protection of safety-related structures, systems, and components.
- 5) Repairs to the concrete support structure around the ceiling of the control room, "prior to restart from the next refueling outage at Palisades" (this was at the time referencing

the January 2014 scheduled refueling outage but was overcome by the events described below).

During the licensee's monitoring of SIRWT leakage under the July 2012 CAL, the leak rate from the tank increased to a volume of 100 gallons per day in early May 2013, at which time the plant was again shut down as required in the CAL, pending additional repairs. In June 2013, during the course of these repairs, a previously unaffected nozzle connected to the SIRWT commenced leaking into the control room, with water droplets affecting one control room panel. The leakage was estimated at 4 hours in duration, with a rate of 3 drops per minute. According to the senior resident inspector he confirmed that there was no adverse impact on safety related equipment, and the leak was repaired and terminated. In August 2013, the NRC issued a third green finding in the aftermath of this series of incidents, identifying a weld failure in the nozzle as the source of this particular leak. Additional, extensive repairs were completed during this shutdown, and involved the re-draining of the tank, extensive repairs to the metal of the tank, including replacement of the tank floor, and the installation of a new supporting structure below the tank. The plant was restarted in June 2013. OIG review of inspection reports and annual and mid cycle assessments disclosed that no control room leakage has been reported to NRC since June 2013, and no SIRWT leakage has been reported to NRC since July 2013.

ISSUE 2: Safety Culture Concerns

OIG learned that safety culture issues were raised in relation to a 2010 incident in which a Palisades reactor operator departed his post without appropriate relief, and a 2011 incident in which a direct current power failure led to a plant shutdown and a subsequent NRC yellow finding. NRC addressed the 2010 incident through an enforcement resulting in a Confirmatory Order (CO); pursuant to this CO, an outside contractor conducted an April 2012 safety culture survey at Palisades.

OIG learned through interviews of resident inspectors and Region III management that the resident inspectors attended the contractor's briefing of survey results to licensee management, and reported the negative results of the survey to their branch chief. The resident inspectors requested a copy of the survey, but the licensee declined to provide it, although the residents were provided with its executive summary and allowed to access and review the full report in licensee space. The branch chief commented that this was not improper and was analogous to the NRC's handling of the Institute of Nuclear Power Operations documents and helped safeguard against inappropriate licensee identification of survey respondents. The resident inspectors were aware of licensee staff frustrations, but that these were not limited to safety culture alone. A biannual NRC Problem Identification and Resolution inspection (PI & R), conducted concurrently with the contractor survey, while less reflective of negative safety culture, identified instances in which issues were not pursued with "sufficient vigor" when

identified. A September 2012 supplemental inspection was conducted as followup to the 2011 yellow finding.

According to the branch chief, the resident inspector staff shared the information they had obtained regarding safety culture with the supplemental inspection team. In addition, according to the branch chief, during the course of the supplemental inspection, the team "performed focused inspection" covering safety culture, conducting numerous licensee staff interviews and document reviews.

OIG review of the supplemental inspection report disclosed that the inspectors found that safety culture components possibly caused or significantly contributed to performance issues. The inspection report indicated that the licensee's responses to the yellow finding, and to another, unrelated 2011 white finding, were adequate, and licensee actions to correct the conditions and prevent recurrence were deemed appropriate. However, the report also noted that safety culture at Palisades was improving as of the September 2012 timeframe of the inspection. The inspection team documented that plant employees perceived that the site was moving in the right direction, but that staffing and retention issues and the corresponding knowledge management challenges were impeding progress toward more proactive problem resolution. The report described the safety culture as "adequate and improving."

According to branch chief, NRC provided "heightened scrutiny" of plant safety culture throughout 2013 and 2014. OIG obtained and reviewed the relevant reports and noted that in 2014, the NRC conducted two additional PI & R inspections at Palisades, one in February 2014 specifically focused on safety culture issues, and a December 2014 focused inspection specifically on safety culture. Safety culture issues were identified in and addressed by these inspections. However, these were specifically associated with the Security Department at Palisades, rather than with reactor operations, and were not related to the 2010 and 2011 incidents relevant to this investigation.

Distribution

Case File 12-056

Magnum

OIG/AIGI	OIG/AIGI	Editor	OIG/AIGI	OIG/AIGI	OIG	OIG
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3/25/2016	3/29/16	3/19/16	3/25/16	3/25/16	3/25/16	3/21/16

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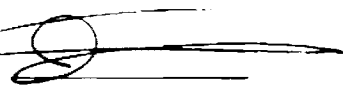


OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

March 25, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

FROM:

(b)(7)(C)
Team Leader, (b)(7)(C)

SUBJECT:

CONCERNS REGARDING ADEQUACY OF REGION IV
REVIEW OF THE 2003 FORCED SHUTDOWN
AT CALLAWAY PLANT (OIG CASE NO. 12-80)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted this investigation based on two similar allegations questioning the adequacy of NRC Region IV's investigations into alleged misconduct at the Callaway Plant, a nuclear power plant in Callaway County, MO. One allegation was submitted from (b)(7)(C), an NRC employee (b)(7)(C), and the other was submitted by (b)(7)(C), a private citizen and energy consultant with whom (b)(7)(C) had discussed his concerns pertaining to Callaway. (b)(7)(C) also submitted a (b)(7)(C) to NRC about the matter, in an email dated (b)(7)(C) to the NRC Executive Director for Operations (EDO).

As conveyed in the allegations, on October 21, 2003, Callaway plant operators were in the process of lowering reactor power in anticipation of a forced shutdown when the reactor passively shut down at approximately 10:18 a.m.; however, operators failed to recognize the passive shutdown until an alarm sounded in the Main Control Room at 11:25 a.m. Then, when the (b)(7)(C) learned the reactor was no longer critical, he allowed the operators to "drag their feet" for 40 minutes to conceal the incident from his superiors instead of ensuring the operators immediately inserted the control rods to properly shut down the reactor. It was alleged that the passive reactor shutdown was never documented by the operating crew in the plant's Corrective Action

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Program, and the event was concealed from plant management until it was accidentally uncovered in February 2007 and documented with a condition report. It was also alleged that in August 2007, the (b)(7)(C) who conducted the October 21, 2003, shutdown provided incomplete and/or inaccurate information in Callaway Action Request (CAR) 200702606 concerning his knowledge of when the reactor went subcritical, and lied under oath about this during an interview with NRC's Office of Investigations (OI).

According to the allegation, three NRC investigations (RIV-2007-A-0028, OI Case 4-2007-049, and Allegation RIV-2007-A-0096) into the October 21, 2003, incident did not assess whether the operators at Callaway were aware that the reactor was subcritical between 10:18 a.m. and 11:25 a.m., and the two investigations that occurred after August 2007 did not indicate having examined the accuracy or completeness of information in CAR 200702606.

Findings

OIG monitored the staff's actions in response to (b)(7)(C) concerns and found that, collectively, three Region IV reviews of his allegations examined the reasons for the time delay before shutting down the reactor, the plant's handling of the matter and documentation in its corrective action program, and whether there was a willful failure to document the issue properly. These reviews (1) determined plant operators may not have exercised optimum reactivity management and lacked adequate plant awareness, (2) did not substantiate that the operations crew left the control rods withdrawn so they would not have to admit to upper management having lost control of the reactor, and (3) did not substantiate that Callaway control room personnel willfully failed to document a temperature transient on October 21, 2003. In addition, following (b)(7)(C) email to the EDO, Region IV performed a line-by-line comparison and cross-referenced (b)(7)(C) concerns with NRC's responses to those concerns and determined NRC had already addressed the concerns and the email did not provide any new allegations.

OIG also found that the agency did not communicate to (b)(7)(C) until 2014 that it had addressed, and found unsubstantiated, his specific concern about the accuracy of statements in CAR 200702606.

Basis of Findings

Chronology/Background

OIG compiled the following chronology and technical analysis of events based on (1) interviews with NRC Region IV and Office of Nuclear Reactor Regulation staff; (2)

review of transcripts of interviews conducted by OI; (3) correspondence between (b)(7)(C) and NRC and a member of Missouri's House of Representatives; and (4) Callaway operational information related to the event.

At 7:21 a.m. on October 20, 2003, a Callaway nuclear power plant safety related electrical component, an instrument inverter, became inoperable, requiring the plant to begin a shutdown within 24 hours and to be shut down within 30 hours in accordance with plant technical specifications. Plant technical specifications are part of the plant's NRC license and the licensee must comply with them.

After discovery of the failed inverter, plant staff made efforts to repair it. These efforts were unsuccessful, and plant staff began reducing the power of the reactor at a rate of 10 percent/hour starting at 1 a.m. on October 21 to comply with technical specifications. By 7:21 a.m., 24 hours after the failure of the inverter, the inverter had still not been repaired; thus, technical specifications required that the reactor be completely shut down by 1:21 p.m.

When power in a reactor is reduced, an isotope of the element Xenon, Xenon-135, increases and peaks about 10 hours after the power reduction occurs. Xenon-135 absorbs neutrons in the reactor and reduces the reactor's power. As the power in Callaway reactor was reduced, Xenon-135 began increasing contributing to the power reduction and eventual shutdown of the reactor.

Reactor power had been reduced as planned to about 10 percent by 10 a.m. when the letdown system automatically isolated. The letdown system automatically removes water from the reactor coolant system (RCS) to maintain the correct water volume when reactor temperature changes. The isolation occurred because the water volume had been reduced in the RCS because of the power reduction and associated cool down. Isolation of the letdown system made operations more complicated and were a distraction for the plant staff, but letdown was restored at 10:48 a.m. Possibly because of this distraction, the reactor temperature was allowed to reach its lower limit allowed by technical specifications. When this was detected by the plant staff, (b)(7)(C) ordered the main turbine generator tripped, which had the effect of stopping the cooldown and increasing the temperature of the reactor. This occurred at 10:12 a.m.

Reactors like Callaway are designed so that an increase in temperature will reduce the power of the reactor. After the main turbine generator was tripped, both the temperature increase and the increase in Xenon-135 were contributing to the power reduction. The combined effect of temperature and Xenon-135 caused the reactor to become sub-critical. The normal means of controlling reactor power is with the control

rods in the reactor and with the boric acid concentration in the RCS. NRC determined that the Callaway operators were not aware¹ that the reactor had become sub-critical and did not effectively control reactor power to maintain the reactor in the desired condition, but also concluded that the reactor was maintained in a safe condition.

Callaway reactor was subsequently completely shut down, the inverter repaired, and the plant returned to service on October 24, 2003.

[Investigative Note: In a June 27, 2011, letter to the EDO, OIG reported the results of OIG Case No. 11-23 investigation into a separate allegation from (b)(7)(C) pertaining to the October 21, 2003, Callaway shutdown. In that investigation, OIG found that NRC Region IV staff provided inaccurate information concerning the timing of "shutdown margin verification" in a letter sent to (b)(7)(C) and (b)(7)(C) (b)(7)(C), pertaining to the event. OIG did not find any evidence that the staff intentionally provided inaccurate information, and briefed Region IV on the matter.]

NRC Review of Callaway Incident

As referenced in the allegation submitted by (b)(7)(C) and (b)(7)(C), the Callaway incident was reviewed by NRC Region IV on three separate occasions. RIV-2007-A-0028, received on March 2, 2007 and closed on August 8, 2007, addressed, among other concerns, an allegation that while shutting down to Mode 3, the RCS temperature dropped below the minimum temperature for critical operation; however, the temperature transient was not documented in a condition report until 38 days later, and it was not documented in the shift supervisor log. Moreover, the condition report did not address why the control rods were not inserted until 90 minutes after the reactor shut down. Another concern was that the licensee may have intentionally waited 90 minutes to fully insert control rods following shutting down the reactor to avoid scrutiny of crew actions and that such a purposeful delay, along with failure to properly document the incident, was dishonest and negligent. NRC found the first concern was contrary to the licensee's technical specification requirements and planned to document the violation in an inspection report. With regard to the second concern, NRC staff determined that the time delay was not prudent and suggested that the operators may not have exercised optimum reactivity management and may have lacked adequate plant awareness. The staff's review of operating procedures did not find any timeliness guidance on performing the steps to insert the control rods.

¹ NRC reported its conclusion that the operators were not aware the reactor had become sub-critical in a letter, dated August 25, 2011, to Representative Jeannette Mott Oxford.

RIV-2007-0096, received on September 27, 2007 and closed on February 26, 2010, reviewed a concern related to the prior contention (in RIV-2007-A-0028) that the Callaway operating crew lost control of core reactivity and left the control rods withdrawn for 90 minutes. The allegation contended that the control rods were not inserted so the crew did not have to admit to upper management that it had lost control of the reactor. The summary stated that although the alleged provided reasons why the crew's action should be the subject of an OI investigation, the alleged did not provide a reason why the crew's actions were unsafe or failed to comply with the licensee's procedures or NRC's requirements. NRC's investigation found that reactor power was not well managed during the October 2003 shutdown and substantiated that the licensee failed to document the matter properly in its corrective action program. This was a violation of an NRC requirement and was documented as a non-cited violation in NRC inspection Report 05000483/2007003. NRC did not substantiate that the operations crew left the control rods withdrawn so they would not have to admit to upper management that it had lost control of the reactor.

OI Case No. 4-2007-049, "Failure To Document a Temperature Transient by Control Room Personnel," initiated on September 28, 2007 and closed on May 9, 2008, did not substantiate that Callaway control room personnel willfully failed to document a temperature transient on October 21, 2003.

Interview of Region IV (b)(7)(C)

(b)(7)(C)

Region IV, NRC, told OIG she personally reviewed NRC's files pertaining to (b)(7)(C) allegations; (b)(7)(C), and the Region IV OI case files and transcripts pertaining to the October 21, 2003, shutdown of Callaway nuclear power plant. She did a line-by-line comparison and cross-referenced the concerns raised by (b)(7)(C) and NRC responses to those concerns to determine if (b)(7)(C) had raised any new issues in his (b)(7)(C) correspondence to the EDO. She found that (b)(7)(C) concerns had been addressed by the NRC and that (b)(7)(C) did not identify any new allegations that had not been previously addressed by the NRC. (b)(7)(C) noted that one of the concerns was that the (b)(7)(C) did not provide complete and accurate information in CAR 200702606. Because there was no indication that this specific concern had been previously identified or addressed by NRC, an Allegation Review Board assigned an action for ACES and OI to review the transcript of the interview with the (b)(7)(C) and compare it to CAR 200702606. Her review determined that no new issues were raised and there were no substantive discrepancies between the CAR and the transcript. Because there were no discrepancies between the two, combined with the fact that the information contained in both was consistent with other documents previously reviewed, she found no indication

that the (b)(7)(C) failed to provide complete and accurate information in the CAR.

(b)(7)(C) told OIG that the licensee did not initiate a CAR for going below minimum critical temperature on October 21, 2003, which was a procedural violation. It did not violate the technical specification; therefore, NRC documented it as a non-cited violation in NRC Inspection Report 05000483/2007003. She said there were no safety concerns and the reactor was never in an unsafe condition. She said that the licensee's actions were inconsistent with good operating procedures; however, these actions did not violate NRC regulations.

Interview of (b)(7)(C)

(b)(7)(C) Office of Enforcement (OE), NRC, told OIG she received an email in approximately (b)(7)(C) from (b)(7)(C) documenting his concerns pertaining to the October 21, 2003, shutdown of Callaway. She identified one new allegation in (b)(7)(C) correspondence that she wanted to enter into NRC's allegation program. The allegation pertained to a Callaway manager intentionally entering misleading information in the Callaway Quality Assurance Record (QAR). OI had previously investigated the allegation and determined that the manager had not intentionally entered misleading information into the record. (b)(7)(C) said NRC had the answer to (b)(7)(C) allegation, but had not communicated it to him in NRC correspondence concerning the allegations or in (b)(7)(C). She said this was a mistake and NRC needed to enter it as a new allegation into NRC's allegation program and provide a response to (b)(7)(C). However, her supervisor at the time, (b)(7)(C) instructed her not to enter it into NRC's allegation program because the Chairman and EDO had assumed responsibility for responding to (b)(7)(C). She was told that NRC was conducting an assessment of (b)(7)(C) issues and was going to issue an all-encompassing letter to (b)(7)(C) covering every allegation he raised, including the allegation about misleading information in the QAR. She was told that she would be able to review the NRC letter to ensure the issue was addressed.

[Investigative Note: OIG learned that the Office of the General Counsel did not issue to (b)(7)(C) the "all-encompassing" letter (b)(7)(C) thought would be issued and that OE handled the response to the allegation conveyed by (b)(7)(C) and provided NRC's response in a November 13, 2014, letter from (b)(7)(C) to (b)(7)(C).]

OIG Review of NRC's November 13, 2014, letter to (b)(7)(C)

OIG reviewed a letter, dated November 13, 2014, from (b)(7)(C) to (b)(7)(C) in which (b)(7)(C) described (b)(7)(C) concern and provided the agency's response. In response to (b)(7)(C) concern that NRC did not evaluate the accuracy of statements made in the Corrective Action Request System (CARS) 200202606 document, she wrote, "As previously discussed with you on July 10, 2014, the NRC OE conducted a review of the allegation files and discussed the issue with knowledgeable members of the NRC staff. The OE concluded that the staff did indeed evaluate CARS 200702606 and did not substantiate your concern."

(b)(7)(C) said that as noted in a July 1, 2014, letter from former NRC Chairman Allison MACFARLANE to a member of the Missouri House of Representatives,

...NRC has addressed your concerns regarding the October 21, 2003, Callaway plant shutdown multiple times through correspondence and meetings. You may disagree with some of the NRC staff's findings, but the NRC has concluded, based on its independent inspection and investigation, that there is no evidence that would indicate that there was wrongdoing, such as a cover-up, concerning the shutdown event. In the absence of new information, there is no regulatory or safety basis for NRC to expend further resources related to the October 21, 2003, Callaway plant shutdown. Therefore, the NRC has closed this matter, and the staff plans to provide no additional feedback regarding this issue.

Because OIG did not identify evidence suggesting NRC staff did not address (b)(7)(C) concerns, and the allegations did not provide new information for consideration by NRC, it is recommended that this case be closed to the files of this office.

Distribution

Case File 12-80

Magnum

OIG (b)(7)(C)	(b)(7)(C)	OIG (b)(7)(C)	OIG J. McMillan	OIG D. Lee	OIG H. Bell
3 74116	3 124116	3 124116	3 125116	3 25116	3 131116

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001



OFFICE OF THE
INSPECTOR GENERAL

April 2, 2015

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

(b)(7)(C)

FROM:

Special Agent, (b)(7)(C)

SUBJECT:

INAPPROPRIATE INFLUENCE ON THE NRC'S MERIT
SELECTION PROCESS BY NMSS MANAGER (OIG CASE
NO. 13-51)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an allegation that (b)(7)(C)

(b)(7)(C) Office of Nuclear Materials Safety and Safeguards (NMSS), had an inappropriate role in the hiring selection of (b)(7)(C) as a (b)(7)(C) in the (b)(7)(C) and in the hiring selection of (b)(7)(C) as a (b)(7)(C) in the NMSS (b)(7)(C). [Note: this occurred prior to (b)(7)(C) holding her current assignment as (b)(7)(C). It was further alleged that (b)(7)(C) had claimed credit for (b)(7)(C) hiring in conversation with other employees, and that (b)(7)(C) was a personal friend of the (b)(7)(C), who are a married couple.

Potential violations relevant to this allegation include: 5 CFR 2635.101- Basic Obligation of Public Service, 5 CFR 2635.702- Use of Public Office for Private Gain, 5 USC § 2301- Merit System Principles, 5 USC § 2302 (b), Prohibited Personnel Practices and NRC MD 10.15- Merit Staffing Program.

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Findings

OIG did not develop any evidence that (b)(7)(C) participated inappropriately in either of the two hiring processes in question. In the case of the (b)(7)(C) position, OIG found that the division's management had identified the need for the position and written the position description. OIG found that the (b)(7)(C) had sought the assistance of (b)(7)(C) in reviewing written applications, and that (b)(7)(C) provided such assistance, consistent with applicable NRC regulations. The (b)(7)(C) made the selection of (b)(7)(C) and told OIG that (b)(7)(C) was performing well in the (b)(7)(C) position. In the case of the (b)(7)(C) position, OIG found that (b)(7)(C) did not participate in this hiring process. (b)(7)(C) was not alleged to have a covered relationship or financial connection with either (b)(7)(C) or (b)(7)(C), but rather to be a personal friend.

Basis for Findings

When interviewed, (b)(7)(C) confirmed that one of his employees was (b)(7)(C). (b)(7)(C) had been in that position since approximately July 2013. (b)(7)(C) stated that (b)(7)(C) primary duties involved (b)(7)(C).

(b)(7)(C) stated that (b)(7)(C) was "doing very well" and "meeting all the expectations." (b)(7)(C) stated that when he arrived to assume the (b)(7)(C) position, the hiring announcement for the (b)(7)(C) position was already closed. (b)(7)(C) stated that he was not involved in the drafting of the Position Description (PD) and "basically inherited it." (b)(7)(C) stated that the normal process within his (b)(7)(C) was that any new PD would go to the (b)(7)(C) first, for review in consultation with the (b)(7)(C). (b)(7)(C) identified the responsible (b)(7)(C) at the time as (b)(7)(C).

(b)(7)(C) confirmed that (b)(7)(C) was the sole rating official for the (b)(7)(C) applications, and that he himself had selected her for that function, because of her prior experience in the (b)(7)(C) and her knowledge of its work. (b)(7)(C) stated that Office of the Chief Human Capital Officer (OCHCO) rules permitted a single rating official, given that this was a GG-14 position and the number of applications received was small. (b)(7)(C) stated that consistent with normal procedure, (b)(7)(C) interfaced mainly with OCHCO, which, in turn, provided (b)(7)(C) with the best qualified list (BQL) for interviews. (b)(7)(C) stated that (b)(7)(C) was the only applicant on the BQL and the only applicant interviewed. (b)(7)(C) confirmed that it was (b)(7)(C) who made the assessments resulting in (b)(7)(C) appearance as the only individual on the BQL. (b)(7)(C) stated that he was aware that (b)(7)(C) and (b)(7)(C) had a personal friendship. However, he only learned of this after (b)(7)(C) was hired. However, he said that he did not think

this knowledge would have changed his mind in choosing her as a rating official for the position.

When interviewed, (b)(7)(C) stated that the need for the (b)(7)(C) position had been identified in approximately 2011. (b)(7)(C) stated that she herself initiated the drafting of the PD on the position, because there was then no permanent (b)(7)(C). She worked with several acting (b)(7)(C) on the PD before (b)(7)(C) took over the (b)(7)(C) permanently. (b)(7)(C) stated that it was not "unheard of," but was rare, for only one candidate to appear on a BQL and be interviewed. (b)(7)(C) stated that she was aware that the PD in question was narrow and would result in limited applications. She said that the rare combination of a fuel cycle skill set and a structural engineering skill set would naturally limit the number of potential candidates for this type of position.

OIG's review of the application package for the (b)(7)(C) position and an interview with (b)(7)(C) and a former (b)(7)(C) (b)(7)(C), confirmed that (b)(7)(C) was the only candidate, out of six total, to make the BQL, and that (b)(7)(C) was the rating official. (b)(7)(C) acknowledged a potential perception issue in the hiring process due to friendship with the (b)(7)(C). However, (b)(7)(C) also indicated that he concurred with (b)(7)(C) placement on the BQL and that he knew from conversing with (b)(7)(C) that (b)(7)(C) performance in the position had been good.

When interviewed, (b)(7)(C) Office of New Reactors, addressed the issue of (b)(7)(C) hiring as a (b)(7)(C). She identified herself as an applicant for that position, who was not selected. She stated that she had sought feedback on the application process from (b)(7)(C) (b)(7)(C) who had said that (b)(7)(C) had rotational experience as a (b)(7)(C) and had good references. (b)(7)(C) was aware that (b)(7)(C) was a (b)(7)(C) of (b)(7)(C) and had heard "rumors" that (b)(7)(C) had helped (b)(7)(C) in this hiring process, but had not heard of (b)(7)(C) claiming credit for (b)(7)(C) hiring.

When interviewed, (b)(7)(C) denied any inappropriate participation in either hiring process. (b)(7)(C) acknowledged her friendship and mentorship of both (b)(7)(C) and (b)(7)(C). Regarding (b)(7)(C) hiring, (b)(7)(C) identified (b)(7)(C) as (b)(7)(C), and stated that (b)(7)(C) had asked her to assist in the hiring for the (b)(7)(C) position by being the rating official for applications. She stated that she was aware that under an OCHCO rule, a single rating official was permissible because there were "very few applicants for the job." (b)(7)(C) denied having any role in the writing of the PD or reviewing it. (b)(7)(C) stated that her review of the crediting plan for the position showed that it was very "specific." She understood her duty in paneling the applications as following the crediting plan closely and rating applicants against it. She stated that,

for example, the plan cited international experience, and noted that (b)(7)(C) application indicated that he had attended two (b)(7)(C) (b)(7)(C), and that this set his application apart as an "A" candidate regarding the international experience element because "nobody else said it" and so they were classified as "B" candidates. She provided another example in the area of (b)(7)(C). (b)(7)(C) stated that only (b)(7)(C) cited this type of experience as well. She confirmed that of the applicants, only (b)(7)(C) was interviewed. She stated that she did, however, avoid providing any assistance to (b)(7)(C) in preparing his application because she knew she would be a reviewer on it. She stated that (b)(7)(C) did not ask for her help in any case. (b)(7)(C) stated that she did not consider the hiring of (b)(7)(C) as a matter she should recuse herself from. (b)(7)(C) also did not seek the Office of the General Counsel (OGC) advice on this matter.

With regard to (b)(7)(C) hiring as an (b)(7)(C) in November 2012, (b)(7)(C) stated that she was not involved in this "at all," but rather that the hiring was done by a team of NMSS (b)(7)(C). This was consistent with the results of an OIG review of the documentation for this hiring process. (b)(7)(C) stated that the only involvement she had had was to provide advice that (b)(7)(C) seek financial experience to prepare for such a position, and to assist (b)(7)(C) in filling out the forms to request a solicited rotation in the Office of Nuclear Regulatory Research (RES) in a (b)(7)(C) position. (b)(7)(C) stated that she helped several applicants, including (b)(7)(C), apply for three (b)(7)(C) positions. (b)(7)(C) stated that at that time she was not in (b)(7)(C) chain of command, then serving as a (b)(7)(C) in the Office of the Executive Director for Operations.

(b)(7)(C) said that on one occasion at dinner with other NRC employees, she had remarked that "I know how to get people hired, I know how to get people promotions." She stated that this did not imply favoritism but rather referenced that she was aware, as a (b)(7)(C), of how to assist and mentor employees in their professional development, by knowing what advancement junior employees sought and what other supervisors might expect. She categorized this as "coaching" and said that she viewed herself as particularly skilled at this.

OGC and OCHCO representatives interviewed by OIG indicated that a working friendship or mentoring relationship may present a potential appearance problem in hiring, but there are no rules that address this situation. It is not a prohibited relationship, and does not reach the level of misconduct, or a violation of ethics laws or regulations prohibiting nepotism, in the absence of aggravating circumstances such as a familial, romantic or cohabiting relationship. However, the OCHCO representative said it would have been in the best interest of the NRC manager to have recused him or herself from the hiring process, and the OGC representative said she would be concerned if the rating official did not mention his/her relationship with the applicant before conducting the rating for the position.

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OIG briefed OGC concerning this matter. Because OIG did not develop any evidence of misconduct, it is recommended this case be closed to the files of this office.

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Distribution: (b)(7)(C)

Case File 13-51

Historical File Magnum

OIG/AIGI	(b)(7)(C)	OIG/AIGI	OIG/AIGI	(b)(7)(C)	OIG	OIG
(b)(7)(C)		(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
4/3/2015	1 1	4/3/15	4/2/15	4/16/15	4/16/15	4/16/15

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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

April 20, 2015

MEMORANDUM TO:

(b)(7)(C)

Office of Nuclear Materials Safety
and Safeguards

FROM:

Hubert T. Bell
Hubert T. Bell

Inspector General

SUBJECT:

NOTICE OF CASE CLOSING (OIG CASE NO. 13-051)

The Office of the Inspector General has concluded an investigation of an allegation that you improperly used your position to assist two employees in obtaining promotions within NMSS.

This memorandum is to inform you that our investigation of the alleged misconduct described above is complete. Our investigation did not corroborate the alleged misconduct and the case is closed.

The purpose of this memorandum is to provide closure for you. This memorandum does not grant immunity to you for any future investigation of this allegation.

Agency management has been advised of this case closing.

If you have any questions regarding this matter, please contact (b)(7)(C)

(b)(7)(C)

at (b)(7)(C).

cc: Mark SATORIUS, EDO

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Distribution:

File Location: (b)(7)(C), (b)(7)(E)

AIGI r/f

OIG Case No. 13-051

Historical File

OIG/AIGI	OIG/AIGI	OIG/AIGI	OIG (b)(7)(C)	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
4/16/2015	4/16/15	4/16/15	4/16/15	4/16/15	4/16/15

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001



OFFICE OF THE
INSPECTOR GENERAL

April 2, 2015

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

FROM:

SUBJECT: REGION IV EMPLOYEE ALLEGED PRESSURE TO
DOWNPLAY INSPECTION FINDINGS AND RETALIATION
CAUSING A CHILLED WORK ENVIRONMENT
(OIG CASE NO. 13-052)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was based on an allegation from (b)(7)(C)

(b)(7)(C) RIV, NRC, who claimed she had been the subject of a chilled work environment as an inspector in RIV's Division of Nuclear Materials Safety (DNMS), she was experiencing pressure to downplay inspection findings, and other inspectors were considering not bringing inspection issues forward unless they were egregious. (b)(7)(C) also believed she was being retaliated against as her permanent position was to be filled while she was on a 2-year rotation to RIV's (b)(7)(C)

Potential violations relevant to this investigation include the following: No Fear Act; PL 107-174; whistleblower retaliation 8 (a); 5 USC 2302 8 (b), Prohibited Personnel Practices; and 5 CFR 2635.101, Basic Obligation of Public Service.

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Findings

OIG did not find evidence that a chilled work environment existed or that inspectors were pressured to downplay inspection findings in DNMS. OIG also did not find any evidence of retaliation against (b)(7)(C) in this case. OIG determined, however, there was a strained professional relationship between two DNMS (b)(7)(C) (b)(7)(C) and their disagreements had an impact on the work of several DNMS employees.

Basis of Findings

Interview of the Allegor

OIG interviewed (b)(7)(C) who was then on a rotational assignment as an (b)(7)(C) at NRC Region IV. Prior to the assignment, she served as a (b)(7)(C) in DNMS (b)(7)(C) RIV.

(b)(7)(C) conducted two inspections at the Lovelace Respiratory Research Institute (LRRI) after a former LRRI employee made allegations concerning LRRI's safety procedures. After returning from an inspection, (b)(7)(C) raised multiple issues that she believed constituted license violations. However, she told OIG that her findings led to a differing of opinions at NRC RIV between the (b)(7)(C) for (b)(7)(C) (b)(7)(C). For example, (b)(7)(C) told OIG that LRRI had a license condition that required them to have a bioassay program for workers. The RIV inspection found LRRI did not have an internal dosimetry or any other bioassay program and accordingly wrote it up as a proposed violation of a license condition. However, (b)(7)(C) disagreed with the inspection report and thought the license condition was vague, and the proposed violation was downgraded to an unresolved item. According to (b)(7)(C) several other proposed violations led to additional disagreements between (b)(7)(C) and (b)(7)(C).

(b)(7)(C) thought the NRC RIV issued LRRI a poorly written license and believed the license led to many of the disputes identified. She did not know if DNMS considered issuing a new license to address the proposed findings/violations that did not make it into the final report. (b)(7)(C) did not believe DNMS violated any policies or laws and stated, "I can live with what we did. I don't think we covered everything, but I can live with it."

At the time of their inspection and subsequent report, (b)(7)(C) told OIG she did not think she was being chilled, and viewed it as a long and hard fight to keep the proposed violations against LRRI. In subsequent discussions with RIV's Office of Investigations (OI), an OI investigator told her that it sounded like a chilled work environment. (b)(7)(C) also told OIG that she may be the subject of

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retaliation, as DNMS management intended to fill her permanent position while she was on temporary rotation.

Interview of Region IV Employees

Interview of (b)(7)(C) Region IV

(b)(7)(C) accompanied (b)(7)(C) on an inspection of LRRI. (b)(7)(C) stated (b)(7)(C) and (b)(7)(C) disagreed on many of the proposed violations, and the inspection report was delayed because of these disagreements. (b)(7)(C) helped revise the inspection report, and remembered that a proposed violation concerning the inexperience of LRRI's (b)(7)(C) was the only thing that was totally removed from the report. When asked about (b)(7)(C) stated she always felt comfortable bringing concerns to his attention.

Interview of (b)(7)(C) Region IV

(b)(7)(C) told OIG that she had previously served in (b)(7)(C) before transferring to (b)(7)(C). She believed the LRRI inspection was contentious because of a communication breakdown between the branches. When asked about (b)(7)(C) (b)(7)(C) said he was one of the best supervisors she had worked with in the NRC. (b)(7)(C) stated (b)(7)(C) communicates well and trusts his staff's work. She believed the conflict between the branches led to a chilled work environment. However, she could not provide any specific examples on how she had been chilled in any way.

Interview of Region IV, Office of Investigations, (b)(7)(C)

(b)(7)(C)

OIG interviewed (b)(7)(C), (b)(7)(C) OI, Region IV, regarding the LRRI inspection and his knowledge of (b)(7)(C) experience with the inspection. (b)(7)(C) told OIG he discussed the allegations surrounding the LRRI inspections with (b)(7)(C). During that discussion, she told (b)(7)(C) about the difficulties in moving the LRRI report forward. (b)(7)(C) told her she might have experienced a chilled work environment. (b)(7)(C) believed she had been unfairly criticized for bringing an allegation forward in April 2013 to the Allegation Review Board (ARB) concerning LRRI's former (b)(7)(C) being unqualified for his position. (b)(7)(C) told OIG that the allegation was delayed in being addressed by the ARB because (b)(7)(C) wanted a detailed analysis. The allegation was brought to the ARB on August 5, 2013, where it was decided that OI would open and assist to staff case. Based on the information received during this assist case, the ARB examined the allegation again in September 2013, at which time a full OI investigation was authorized.

Interview of (b)(7)(C) Former DNMS (b)(7)(C)

(b)(7)(C) told OIG that she had been the DNMS (b)(7)(C) for several years and had previously served as the (b)(7)(C). (b)(7)(C) stated that DNMS management took action when she found out (b)(7)(C) and (b)(7)(C) were attacking each other professionally over whether a violation could be levied against LRRI. (b)(7)(C) described (b)(7)(C) DNMS' (b)(7)(C) as being abrupt in his dealings and seemed to do "drive-by" briefings. (b)(7)(C) also told OIG that (b)(7)(C) (b)(7)(C) could sometimes get emotional during disagreements. (b)(7)(C) stated that DNMS' management was aware of the branch chiefs' relationship, and was actively working on improving their communication with each other.

Interview of (b)(7)(C)

(b)(7)(C) told OIG that as (b)(7)(C) she often advises RIV staff regarding inspections and OI investigations. (b)(7)(C) remembered there was a difference of opinion regarding which violations could be levied against LRRI. (b)(7)(C) told OIG that one of the ARB meetings became contentious, mainly because of personalities of certain staff. (b)(7)(C) described (b)(7)(C) as expressing himself very "passionately." (b)(7)(C) did not believe that the meeting was unprofessional, but that it was intense. (b)(7)(C) believed that the LRRI investigation stands out in her mind because after the September 2013 ARB meeting, (b)(7)(C) discussed with the board the difficulties in this case being moved forward. (b)(7)(C) described (b)(7)(C) discussion as collegial, although he believed that there was unnecessary delay in the case and that (b)(7)(C) had been right all along.

Interview of (b)(7)(C) Region IV (b)(7)(C)

(b)(7)(C) told OIG that the 2-year rotational positions created in (b)(7)(C) are meant to broaden the professional development of staff at RIV. (b)(7)(C) stated that (b)(7)(C) (b)(7)(C) is currently in such a position, and she would be rotating back to the DNMS in May 2015. Although the rotational assignment is temporary, (b)(7)(C) told OIG that (b)(7)(C) retained her permanent tenure in DNMS.

Interview of (b)(7)(C) Region IV

OIG interviewed (b)(7)(C) concerning his duties as (b)(7)(C) of DNMS' (b)(7)(C) and his role in the LRRI inspection. (b)(7)(C) stated that (b)(7)(C) and two other DNMS employees conducted an inspection after RIV received an allegation concerning LRRI. Some of the allegations originally focused on the then-current (b)(7)(C) not being qualified for his position. (b)(7)(C) told OIG that he had a conflict with (b)(7)(C) regarding whether LRRI's (b)(7)(C) was qualified. (b)(7)(C) reviewed the guidance, and determined the (b)(7)(C) was qualified. (b)(7)(C) viewed this difference as a problem with the guidance.

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(b)(7)(C) told OIG that LRRI also did not comply with a license condition that required a bioassay program. However, after the license was issued, LRRI wrote implementing procedures that allowed the lab to skirt the bioassay program. (b)(7)(C) stated that he came into conflict with (b)(7)(C) over whether the lack of a bioassay program constituted a violation based on LRRI's procedures. (b)(7)(C) stated that this issue eventually had to be resolved with assistance from the (b)(7)(C) and the Office of the General Counsel. LRRI was cited for a violation for not following the bioassay program. Since LRRI was not following the bioassay program, there was no way of knowing if employees had been overexposed. RIV added an unresolved item to the inspection report requiring LRRI to conduct an evaluation to determine if employees had been exposed to amounts greater than the annual intake limit. A formal evaluation was conducted by a contractor and it was determined there was no evidence suggesting any employee was overexposed.

According to (b)(7)(C) during the October 2011 inspection report editing process, (b)(7)(C) told him that part of the problem was LRRI's license was not specific enough to enforce. (b)(7)(C) opined LRRI's license was "horribly" written and required RIV to be innovative with its citations from an enforcement perspective. (b)(7)(C) proposed that RIV assist LRRI in improving and resubmitting its procedures as license amendments. The license amendments would tie the procedures to the license, thus making them enforceable. This undertaking was accomplished. LRRI submitted licensing amendments that were approved by NRC RIV that tied their procedures back to the license for enforceability.

(b)(7)(C) stated that eventually (b)(7)(C) and he were in "open warfare" during meetings. (b)(7)(C) told OIG that at that point, DNMS management intervened. (b)(7)(C) told OIG he tried to keep (b)(7)(C) involved in the inspection report drafting process. (b)(7)(C) stated (b)(7)(C) did not bring any specific chilled work environment concerns to him. However, (b)(7)(C) believed there was a spill-over effect which affected the staff's work. (b)(7)(C) stated some of his staff raised concerns over (b)(7)(C) behavior, but they were still able to come to (b)(7)(C) regarding safety concerns.

Interview of (b)(7)(C) Region IV

OIG interviewed (b)(7)(C) concerning his duties as (b)(7)(C) of DNMS (b)(7)(C) and his role in the LRRI inspection. (b)(7)(C) stated the inspection indicated that there were problems at LRRI with the Radiation Safety Committee (RSC). (b)(7)(C) stated that he, (b)(7)(C) and others engaged LRRI to strengthen its safety procedures. NRC also told LRRI that it would need to refresh its license. (b)(7)(C) stated the inspection also led to several violations for LRRI. There was a lot of internal discussion within the NRC, mainly because the inspectors were drafting proposed violations that were not tied back to the license. This internal discussion led to the LRRI inspection report being delayed by nearly 6 months. (b)(7)(C) refuted some of the

proposed violations, and was concerned that the NRC may be embarrassed if the licensee refuted the violations. At the end of these discussions, the NRC levied five violations on LRRI.

(b)(7)(C) agreed that (b)(7)(C) proposed findings and violations were of concern from a health physics viewpoint. This led to RIV establishing a committee of five or six inspectors and licensing reviewers to review and compare LRRI's procedures to the concerns RIV had but could not cite during the inspections. According to (b)(7)(C) the committee "tightened up their processes." LRRI submitted licensing amendments that were approved by NRC RIV that tied their procedures back to the license for enforceability.

(b)(7)(C) described his relationship with (b)(7)(C) as having communication problems. (b)(7)(C) stated that at times, (b)(7)(C) tries to preempt his staff's work. (b)(7)(C) stated some of his staff had complained about being directed by (b)(7)(C) in their work. (b)(7)(C) stated that his conflict with (b)(7)(C) led to several conversations between the two of them that were directed and guided by (b)(7)(C). (b)(7)(C) denied any knowledge that his subordinates or anyone else felt uncomfortable bring safety/security concerns to either himself or (b)(7)(C).

Although OIG found that there was a strained professional relationship between DNMS (b)(7)(C) OIG did not find evidence of a chilled work environment or DNMS inspectors being pressured to downplay inspection findings. Additionally, OIG did not find any evidence of retaliation against (b)(7)(C). Accordingly, it is recommended that this case be closed to the files of this office.

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(b)(7)(E)

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Case File 13-52

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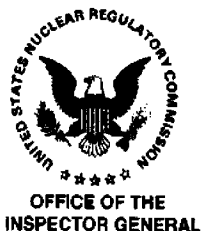
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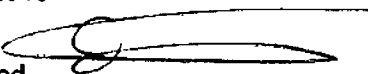
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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

September 22, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)
Team Leader (b)(7)(C)
(b)(7)(C)
Special Agent (b)(7)(C)

FROM:

SUBJECT:

NRC MANAGEMENT DIRECTED STAFF NOT TO ISSUE
REQUEST FOR INFORMATION PERTAINING TO
FINANCIAL ASSURANCE FOR OPERATION COSTS
(OIG CASE NO. 14-011)

Allegation

The Office of the Inspector General (OIG), Nuclear Regulatory Commission (NRC), conducted this investigation in response to a November 14, 2013, allegation from U.S. Senators Edward Markey and Bernard Sanders that on June 5, 2013, NRC Office of Nuclear Reactor Regulation (NRR) technical staff were prevented from issuing a Request for Additional Information (RAI) to Entergy, an NRC licensee, in connection with the financial condition of its nuclear plants (Pilgrim Nuclear Power Station in Massachusetts, Vermont Yankee in Vermont, Indian Point Energy Center and the James A. Fitzpatrick Nuclear Power Plant in New York, and Palisades Plant in Michigan). In addition, it was alleged that the same NRC staff were directed to refrain from issuing financial RAIs to any licensee that is currently subjected to additional safety oversight because of safety problems at the reactors.

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It was also alleged that this direction to staff (refrain from issuing financial RAIs) was contrary to direction provided by then-NRC Chairman Allison MACFARLANE to issue the RAIs and that (b)(7)(C) NRR, (b)(7)(C) (b)(7)(C), disagreed and said that the Chairman "is only one Commissioner."

Potential violation relevant to this allegation is 5 CFR 2635.101 – Basic Obligation of Public Service.

Findings

OIG could not substantiate impropriety in NRR's direction to staff not to issue financial related RAIs to licensees, or that Entergy, an NRC licensee, improperly influenced NRR to make that decision.

OIG found that on June 6, 2013, NRR (b)(7)(C), with support from his managers, directed NRR staff to refrain from issuing financial RAIs until the process for issuing this type of request could be better defined and documented. OIG learned that most RAIs are issued by NRC when the staff is reviewing proposed licensing actions and needs additional information from the licensee to make a decision, and that there is a well-defined process for licensing-related RAIs. However, the financial RAIs that were halted by the NRR (b)(7)(C) were unrelated to any licensing action, and it was not clear to the (b)(7)(C) or his managers what would be done with responses from the licensee. OIG also learned that NRR issued two financial RAIs in the 3 months preceding the decision to postpone further RAIs; however, these were not reviewed by the NRR (b)(7)(C), who had been on rotation at the time. OIG further determined that although an Entergy representative telephoned the (b)(7)(C) manager on July 6, 2013, to express a concern about a draft RAI and request a "drop-in" meeting on June 11, 2013, to discuss the matter, the (b)(7)(C) had documented his concerns clearly and shared them with his managers prior to this contact.

Although the decision to put the RAIs on hold was made after the phone call, and NRC managers recognized the licensee was questioning the process for the financial RAIs and the potential impact on their operations, the managers maintained that their decision to halt the RAIs was not improperly influenced by licensee pressure. Rather, they halted the RAIs after the phone call due to their own concerns about the lack of process, and the "drop-in" meeting did not impact that decision.

OIG found that in March 2015, NRC finalized guidance to staff describing NRC's authority for requesting financial information from licensees and various process aspects, including criteria to determine whether RAIs should be issued, criteria for

evaluating information provided by licensee, and closeout and disposition following staff analysis of licensee responses to financial RAIs. It wasn't until July 2016 that NRR staff evaluated the 2013 RAIs using the new guidance and concluded no further action was required on the RAIs, which are now considered closed by the staff. This information was received July 8, 2016, pursuant to OIG continuous request for finalization by NRR of the issue.

OIG found that former NRC-Chairman MACFARLANE did not recall making a statement to staff to issue the RAIs and that she was aware such direction would have needed to come from the Commission.

Basis of Findings

Background

Decommissioning is the safe removal of a nuclear facility from service and the reduction of residual radioactivity to a level that permits release of the property and termination of the license. NRC rules establish site-release criteria and provide for unrestricted and, under certain conditions, restricted release of a site. NRC also requires all licensees to maintain financial assurance that funds will be available when needed for decommissioning.

Each nuclear power plant licensee must report to the NRC every 2 years the status of its decommissioning funding for each reactor or share of a reactor that it owns. The report must estimate the minimum amount needed for decommissioning by using the formulas found in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning." Licensees may alternatively determine a site-specific funding estimate, provided that amount is greater than the generic decommissioning estimate. NRC staff perform an independent analysis of each of these reports to determine whether licensees are providing reasonable "decommissioning funding assurance" for radiological decommissioning of the reactor at the permanent termination of operation.

Per 10 CFR 50.33(f)(5), NRC may request that a currently operating reactor licensee provide information regarding its financial arrangements and status of funds. Specifically, the Commission may request an established entity or newly-formed entity to submit additional or more detailed information regarding its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

Consistent with NRC staff guidance in NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NRC does not systematically conduct ongoing reviews of financial qualifications or financial conditions of licensees. However, NRC staff conduct ongoing reviews of all licensees by screening trade papers, industry newsletters, and various public sources for business, finance, and economic news to determine whether there is a need for additional information.

One method available to NRC for seeking information from licensees is through an RAI. RAIs are typically issued by NRC when the staff is reviewing proposed licensing actions and needs additional information from the applicant. According to an NRR Handbook, the need for additional information relative to a particular licensing action or activity may be identified by the project manager (PM), but generally such a need is identified by the technical branch reviewer. In the latter case, the technical branch reviewer prepares the questions seeking the information and forwards the questions by memorandum to the PM. The PM reviews the questions and discusses any proposed modifications with the originator. The PM then prepares a letter to the affected organization with instructions for responding. The NRR Handbook notes that it may be helpful to discuss the pending RAI with the organization prior to forwarding the letter to settle on a mutually agreeable response schedule.

Chronology

On March 20, 2013, NRC issued an RAI to Entergy pertaining to information provided on Entergy's quarterly 10-K¹ Securities and Exchange Commission (SEC) filing about its Vermont Yankee Nuclear Power Plant. The RAI asked the licensee to provide more detailed information to support NRC's financial qualification review. The RAI had been drafted by (b)(7)(C) . OIG learned that in addition to drafting the RAI, (b)(7)(C) concurred on the draft as acting (b)(7)(C) .

(b)(7)(C) provided the draft RAI to (b)(7)(C) , the NRR (b)(7)(C) (b)(7)(C) with responsibility for matters pertaining to Vermont Yankee, and (b)(7)(C) coordinated with the plant (per process) by letting the plant know in advance the RAI would be coming and asking them to contact NRC if they had any concerns.

On April 4, 2013, NRC issued an RAI to Luminant Generation Company, LLC, with questions pertaining to information provided on the company's annual 10-K SEC filing

¹ The annual report on Form 10-K provides a comprehensive overview of the company's business and financial condition and includes audited financial statements. After it is filed, 10-K information is made available via the SEC Web site.

with regard to the Comanche Peak Nuclear Power Plant. The RAI was drafted by (b)(7)(C) and provided to (b)(7)(C) the NRR (b)(7)(C) responsible for coordinating with Comanche Peak. This time, (b)(7)(C), as acting (b)(7)(C) (b)(7)(C), concurred on the draft.

On May 2, 2013, Luminant provided its response to NRC pertaining to Comanche Peak and the response discussed the company's internal restructuring of Energy Future Holdings Corporation. After reviewing this response, (b)(7)(C) communicated with Region IV and a "focus inspection" was conducted at the plant to determine if financial issues created safety problems. The inspection determined everything was in alignment at the plant. (b)(7)(C) wrote a safety evaluation and a closeout letter was sent to the licensee on January 28, 2014.

On May 6, 2013, Entergy responded to its RAI with financial projections for the next 5 years. After reviewing this information, (b)(7)(C) was concerned about the financial data and its potential impact on other Entergy plants so she prepared a followup RAI and requested approval from (b)(7)(C).

On May 31, 2013, (b)(7)(C) sent a detailed email to (b)(7)(C), and (b)(7)(C) (b)(7)(C) discussing financial qualifications for operating reactors. Specifically, the email, which was courtesy copied to (b)(7)(C) and other staff members, conveyed that (b)(7)(C) supported the RAIs, but questioned the process for issuing RAIs outside of a licensing action and how to handle the response from the licensee. (b)(7)(C) wrote,

I challenged the staff on what process would apply to this kind of review. (After RAI issuance what is the next step? How are we documenting the technical review given there is no inspection report or licensing action in front of the Commission? What are we producing – an SER? What do we do if we do not agree with the licensees' current situation? What is the criteria for determining financial qualification – the "line in the sand" as it were?) There does not appear to be a documented process for this kind of activity....

On June 5, 2013, (b)(7)(C) provided the draft RAI to (b)(7)(C) who had responsibility for matters pertaining to Vermont Yankee and other Entergy plants. This time, however, after (b)(7)(C) informed Entergy about the draft RAI, the licensee contacted (b)(7)(C) and (b)(7)(C) on June 6, 2013, to express a concern and requested to speak with them about this matter in person the following week because they were already planning to visit NRC that week about a different matter. [Investigative Note: The version of this draft RAI that OIG reviewed did not include any concurrences.]

On June 6, 2013, (b)(7)(C) sent an email to (b)(7)(C) and (b)(7)(C) staff concerning the disposition and issuance of RAIs regarding financial qualifications. The email stated, "in seeking clarity on the most applicable process in which we will ultimately disposition the issues associated with the proposed RAIs and to ensure alignment with (b)(7)(C) management (also (b)(7)(C) management) and the path forward, I am requesting that you hold the proposed RAIs for now."

On June 11, 2013, Entergy representative (b)(7)(C) visited NRC headquarters and met with (b)(7)(C) and (b)(7)(C) to convey his company's concerns that the followup RAI would have a negative impact on the company.

The hold on financial RAIs continued within NRR as (b)(7)(C) (b)(7)(C) worked to develop a policy concerning the use of RAIs for financial information requests.

In March 2015, NRR issued "Interim Staff Guidance – Reviewing and Assessing the Financial Condition of Operating Power Reactor Licensees, including Requests for Additional Information" to clarify NRC's process for reviewing financial conditions of, and financial concerns about, currently operating power reactor licensees. According to the document, this interim staff guidance (ISG) is intended to supplement NRC financial review guidance in NUREG-1577. The ISG describes NRC's authority for requesting financial information from licensees, states that RAIs may be used for this purpose, and defines the process for internal review. The ISG addresses

- A. Level of review – identifying initial issues of concern and confirming accuracy of preliminary sources of information.
- B. Criteria to determine whether RAIs should be issued per 10 CFR 50.33(f)(5) – analysis of preliminary source information.
- C. Staff peer review and management review.
- D. Information to be requested by staff.
- E. Staff analysis – criteria for evaluating information provided by licensees.
- F. Closeout and disposition following staff analysis of licensee response to RAIs.

In July 2016, NRR provided OIG with the results of its assessment of four sets of financial RAIs that were generated during the 2013 timeframe. One set of RAIs had been transmitted to the licensee (Vermont-Yankee) and three sets (Entergy, Duane Arnold, and Exelon) were not transmitted. According to (b)(7)(C), the staff analyzed the four sets of RAIs using the March 2015 ISG and concluded that no further action was required relative to any of the four sets of RAIs.

NRC's analysis, "Disposition of RAIs Generated by Staff in 2013 – Financial Status of Licensees," dated July 5, 2016, describes the basis underlying each set of RAIs and the rationale (i.e., ISG criteria) for concluding no further action was warranted, noting for each set of RAIs "there exists no requirement to meet [financial qualification] requirements" and "the potential for significant, long-term chronic impacts to revenue, net income, or other sources of funds" could not be assumed or derived from the information used as the basis for the RAI.

Interviews

(b)(7)(C) told OIG that after reviewing Entergy's 10-K filings with the SEC, she learned there was an impairment listed for Vermont Yankee. (b)(7)(C) stated that the impairment ("the plant was not producing enough cash flow to cover its operational cost") raised questions as to whether Entergy was meeting the financial qualification requirement, so she decided to draft an RAI to Vermont Yankee, which was issued to the licensee on March 20, 2013. (b)(7)(C) stated that Entergy responded May 2013 with its financial projections, which revealed poor results. (b)(7)(C) developed a followup RAI for Entergy covering multiple plants because she believed other Entergy plants could have been impacted. [Investigative Note: OIG reviewed the RAI, which cited as its rationale (1) information published by the Energy Information Administration on January 9, 2012, describing a decline in wholesale energy prices, and (2) information from an Entergy SEC 10-Q² statement describing the impact of the economic downturn and negative trends in the energy commodity markets.]

On June 5, 2013, (b)(7)(C) provided the draft RAI to (b)(7)(C), who was responsible for matters pertaining to Vermont Yankee and other Entergy plants. She said that typically (b)(7)(C) would contact the licensee to alert them of a forthcoming RAI. However, (b)(7)(C) claimed that before the draft RAI was issued, a representative from Entergy contacted NRC management to question the RAI. (b)(7)(C) stated that the following day, (b)(7)(C) sent an email to the staff to place the RAIs on hold.

(b)(7)(C) said she was told the RAI had not been issued because the process for issuing RAIs was unclear and she did not have a good basis for issuing the RAIs.

Both (b)(7)(C) and (b)(7)(C) told OIG that (b)(7)(C) RAIs did not originate via the usual process. Typically, RAIs come through the division as part of a license amendment request from the licensee. Usually a licensing action is submitted by the licensee and NRC issues RAIs in response. In these instances, however, there was not an actual licensing action or amendment sent from the licensee; instead, NRC's

² The SEC form 10-Q is a comprehensive report of a company's performance that must be submitted quarterly by all public companies to the SEC.

financial review group initiated its own review. The PMs said that it is common practice for PMs to contact the licensee by telephone or email before a formal RAI is issued “just to ensure that the licensee understand[s] what the questions are and minimize rework.” If the licensee does not need further clarification, the RAI is issued formally, requesting the licensee to respond, typically within 30 days.

(b)(7)(C) said when he received the draft RAI for the other Entergy plants, he intended to handle it in the same manner as he had for the Vermont Yankee RAI, but (b)(7)(C) sent an email instructing (b)(7)(C) staff to hold off on sending RAIs to the licensee. (b)(7)(C) stated (b)(7)(C) wanted to “understand our process, understand what we’re asking, understand the outcome, and the expected outcome” of issuing the RAIs outside of a licensing action.

(b)(7)(C) told OIG that in the course of doing business, financial analysts keep informed about the industry by monitoring public information such as newspapers and industry newsletters. By doing this, the financial analysts are able to verify the accuracy of the information and also determine if the information could potentially harm a licensee’s “ability to either build, operate or eventually decommission a plant because the licensee should have the financial resources.” (b)(7)(C) explained that it is rare for financial analysts to ask a question outside of a licensing action and said that in his (b)(7)(C) at NRC, he may have “done that twice maybe, if that many times, where we simply saw something in the paper, asked a question and get an answer.”

(b)(7)(C) said that he was on a 90-day rotation from January 2013 to April 2013 as the (b)(7)(C) when he concurred on RAIs. He could not recall the specifics of the RAIs, but said he spoke to (b)(7)(C) to get a better understanding and felt (b)(7)(C) reasoning was acceptable. (b)(7)(C) was unsure why he did not concur on the RAI issued to Vermont Yankee on March 20, 2013, which showed (b)(7)(C) concurred as the acting (b)(7)(C) on March 18, 2013. (b)(7)(C) said he may have been out of the office and (b)(7)(C) may have been acting.

(b)(7)(C) told OIG that (b)(7)(C) called him and told him that the staff was considering issuing RAIs for Fitzpatrick, Indian Point, and Pilgrim. (b)(7)(C) did not voice his concerns to (b)(7)(C) but spoke to his management, including (b)(7)(C) for all of Entergy, concerning the RAI for the Entergy plants and questioning the basis for the RAI. (b)(7)(C) did not recall receiving a copy of the draft RAI from (b)(7)(C) but said that there were concerns with the draft RAI, if received, because if other merchant fleets in the industry were not receiving a

similar RAI on the same day with the same wording, there could be a “significant unintended consequence.”

(b)(7)(C) contacted (b)(7)(C) and (b)(7)(C) on June 6, 2013, to voice his concerns. (b)(7)(C) told (b)(7)(C) that he would be at the NRC and requested a “drop-in” meeting to discuss the draft RAI. On June 11, 2013, (b)(7)(C) met with (b)(7)(C) and another staff member for approximately 15 to 20 minutes. During the meeting, (b)(7)(C) said he reiterated the concerns and discussed the decommissioning trust process, which is a clear and established process when submitting financial information. However, (b)(7)(C) believed that Entergy was being singled out and the nature of the questions were not being driven by process because typically Entergy would have something before the agency (e.g., a license amendment or relief request) for an RAI to be issued. (b)(7)(C) said the meeting was very short and there was no indication of a disposition, and there was no further communication on the matter after the meeting. Although he did not try to persuade the NRC from issuing the RAIs, he felt he influenced the staff to better understand where the concern was coming from and why.

(b)(7)(C) told OIG that normally when the agency “asks a question, an RAI, it’s usually in the context of a licensing action put before the Commission.” He said the licensees come to the Commission and then request NRC to take an action (e.g., issue an amendment, issue a license, request for an exemption). In the process of reviewing that application, NRC may have the need for more information, and uses an RAI to ask the question. In this case, he said, there was no licensing action before the Commission. Instead, the staff had a concern and wanted to ask the licensee for information to help disposition this concern. It was unclear to (b)(7)(C) what NRC would do with the response because there was no license to be issued or safety evaluation report to come of it. (b)(7)(C) said, “It was very unclear what the process was for dealing with this because it was out of the norm.”

(b)(7)(C) said the RAI questions were developed when he was on rotation, but (b)(7)(C) requested approval to send the RAI to the licensee after (b)(7)(C) returned. (b)(7)(C) believed that the questions were reasonable, but was concerned about the process. Nevertheless, he said he concurred on the draft RAI and it was forwarded to (b)(7)(C) the licensing organization who, in turn, contacted the licensee to inform them of the draft RAI.

According to (b)(7)(C) after (b)(7)(C) spoke to NRR management and questioned the regulatory basis for the draft RAI, a decision was made by (b)(7)(C) and (b)(7)(C) to put a hold on all draft RAIs that were developed to address the process-related concerns (e.g., What process are we in? What is the regulatory basis?) before the questions are issued to the licensee. (b)(7)(C) sent an email to (b)(7)(C) as well as the NRR staff to put

a hold on the draft RAIs for the moment. The following week, (b)(7)(C) had a drop-in meeting with (b)(7)(C) for approximately 10-15 minutes to discuss his concerns.

(b)(7)(C) told OIG that (b)(7)(C) sent a detailed email on May 31, 2013, to him and (b)(7)(C) that discussed a set of RAIs that were being developed for Entergy as well as other facilities. (b)(7)(C) stated (b)(7)(C) was concerned with the process, basis, and overall handling of the RAIs. (b)(7)(C) said (b)(7)(C) wanted to pause before issuing the RAIs to figure out a process for this type of RAI. (b)(7)(C) said he agreed with (b)(7)(C) approach.

(b)(7)(C) said (b)(7)(C) requested a meeting with (b)(7)(C) and (b)(7)(C) a week after the RAIs were placed on hold. (b)(7)(C) recalled that (b)(7)(C) told (b)(7)(C) that if an appropriate question needed to be asked, it would be asked. (b)(7)(C) said while there could have been an appearance that (b)(7)(C) was trying to influence the staff not to issue the RAIs, the meeting did not influence his decision to put the draft RAIs on hold.

(b)(7)(C) said that interim staff guidance was generated as a part of the initiative to better clarify and implement the process. He said the RAIs that were placed on hold would be reviewed using the newly developed process and a determination will be made as to whether or not to issue the RAIs.

(b)(7)(C) told OIG that he learned of the RAIs when he received a call from (b)(7)(C) who wanted to discuss the RAIs with NRR management because he had some questions and concerns. Prior to that phone call, (b)(7)(C) said he had not seen the RAIs developed for Entergy.

(b)(7)(C) said during the meeting, he and (b)(7)(C) listened to (b)(7)(C) concerns about the RAIs and the possible impacts of these RAIs on the company's stock prices as well as how shareholders may perceive what was going on with the company and/or the general market impact. (b)(7)(C) told (b)(7)(C) that although he was mindful of (b)(7)(C) concerns, they were not of primary concern to NRC. He said that if the staff identified a safety issue with their facility or an issue with their licensing basis, the RAIs would be sent. (b)(7)(C) told (b)(7)(C) he would review the RAIs and go from there. (b)(7)(C) indicated that at no time during the meeting with (b)(7)(C) did he feel he was being influenced not to issue the RAIs to Energy.

After the meeting with (b)(7)(C) said that he met with (b)(7)(C) and (b)(7)(C) to review the draft RAI to Entergy to determine what was being asked. Based on their review, it appeared that the RAI was general in nature because it referenced a Department of Energy Web site link to a report that discussed declining energy prices

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across the country. (b)(7)(C) said that the review prompted questions about the process for issuing the RAIs outside of a licensing action.

(b)(7)(C) said the regulatory basis for issuing the RAIs was not clear and he believed that until the staff could document a clear basis of what was being asked, how that information was going to be used, and the connection to safety, the RAIs should be placed on hold. (b)(7)(C) said that the regulation (NUREG-1577) "is not precisely defined as some other areas in our regulatory framework."

(b)(7)(C) told OIG that the current process for issuing RAIs outside of a licensing action is ad hoc, and he requested that the staff develop a process, implement through interim guidance, make revision to the NUREG, and put it out for public comment to receive feedback.

(b)(7)(C) said the decision to place the RAIs on hold was made by (b)(7)(C) and (b)(7)(C) with his support and agreement.

Former NRC-Chairman MACFARLANE told OIG that on December 19, 2013, NRR (b)(7)(C) staff met with her to discuss financial qualifications of nuclear power plants. She did not recall making a statement that the staff should look into the Entergy situation and should issue the RAIs, but she said the staff may have interpreted her questioning of the RAIs as giving direction to issue the RAIs to Entergy. MACFARLANE indicated that she could not give the staff direction to issue RAIs because giving direction to the staff is accomplished through a formal process with the consensus of the other Commissioners. MACFARLANE stated that she could only give the staff direction concerning personnel issues (i.e., training) and/or reorganization issues.

(b)(7)(C) an attendee at the briefing, said that he may have stated to a staff member that the Chairman "is only one Commissioner." (b)(7)(C) could not remember his exact statement to any staff member, but he acknowledged that the former Chairman could not give the staff instruction without a Staff Requirements Memorandum, which the staff never received.

(b)(7)(C) told OIG that (b)(7)(C) tasked him in the May/June 2013 timeframe to develop and clarify a process for issuing RAIs outside of a licensing action. (b)(7)(C) indicated that the process was developed throughout 2014 and the final document was published for transmittal in the Federal Register March 2015 in the form of an ISG. According to (b)(7)(C) the process provides a roadmap for staff to determine if an RAI is warranted under 10 CFR 50.33(f)(5). (b)(7)(C) told OIG that the process will determine if an RAI

should be developed, the criteria used by staff, the questions that would be asked, how the information would be evaluated, and what staff would do with the information.

(b)(7)(C) provided OIG with "Disposition of RAIs Generated by Staff in 2013 – Financial Status of Licensees," dated July 5, 2016, which assessed four sets of RAIs drafted by staff between March and June 2013. The assessment reflected the outcome of the staff's application of the ISG, concluding that no further action was needed with regard to any of the RAIs.

Because OIG could not substantiate that the NRC staff was inappropriately influenced to halt the June 2013 draft RAI, and the staff has developed a process through an ISG when issuing RAIs outside of a licensing action, it is recommended that the case be closed to the files of this office.

Distribution:
Case File 14-011

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OIG (b)(7)(C)	OIG (b)(7)(C)	(b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG	OIG
				J. McMillan	D. Lee	H. Bell
09/06/16	9/6/16	9/8/16	9/7/16	9/14/16	9/22/16	9/23/16

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OFFICE OF THE
INSPECTOR GENERAL

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 15, 2015

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)
Special Agent, (b)(7)(C)

For.

SUBJECT:

UNUSUAL BANK TRANSACTIONS PERTAINING TO AN
NRC EMPLOYEE (OIG CASE NO. 15-003)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), reviewed an investigative referral from (b)(7)(C) (b)(7)(C) Washington Field Office (WFO), Office of Special Inspector General for the Troubled Asset Relief Program (SIGTARP), U.S. Treasury, alerting OIG to unusual cash activities linked to a joint bank account held by (b)(7)(C) (b)(7)(C) (b)(7)(C) Office of the Chief Financial Officer (OCFO), NRC, and his wife.

According to the report, between January 13, 2014, and August 4, 2014, there were 35 cash deposits totaling \$41,050 registered to (b)(7)(C) joint bank account. In addition, account records associated to (b)(7)(C) also reflected 135 cash withdrawals at Automatic Teller Machines (ATM's), bank branches, and casinos for a total of \$58,190—in amounts that varied between \$20 and \$2,000.

Per the monitoring parameters observed by SIGTARP, the aforementioned transactions appeared to be suspicious because no source of funds for the transactions previously described were definitely identified.

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OIG reviewed the SIGTARP's reporting data to (1) determine the identity, and source(s) of the funds used to conduct the suspicious cash deposits and withdrawals associated to (b)(7)(C) and (2) verify if those transactions were part of a criminal scheme furthered by (b)(7)(C) unauthorized appropriation of NRC funds or access to the non-public financial information.

Potential violations relevant to this allegation are Title 18 of the U.S. Code Sections (§) 1956, Money Laundering; § 1003, Demands Against the United States, and § 1344, Bank Fraud.

Findings

OIG found that (b)(7)(C) gambles at Maryland casinos multiple times each week and routinely makes bank withdrawals and deposits in connection with his and his wife's gambling habits. OIG did not identify any evidence to suggest criminal misconduct in connection with these money transactions or gambling, and determined that (b)(7)(C) position at the OCFO, NRC, does not give him access to financial information or funds.

OIG determined that (b)(7)(C) funding of his gambling activities associated with the suspected financial transactions originated from (1) insurance money issued as a result of a fire that occurred in his former residence in or about summer of 2013, (2) profits from the sale of the aforementioned home after reconstruction, and (3) gambling earnings collected between 2013 and 2014.

OIG briefed NRC Personnel Security Branch (PSB) on the results of this investigation.

Basis of Findings

Per SIGTARP's referral, between January 13, 2014, and August 4, 2014—approximately an 8-month period—\$41,050 was deposited in (b)(7)(C) account via 35 cash deposits made in amounts that varied between \$20 and \$3,150, and 135 cash withdrawals made via ATM's, branches and casinos—totaling \$58,190.10. The source(s) of these transactions could not be identified with the investigative data at hand. As a result, SIGTARP shared the information with OIG for further investigative action because the identified account holder was an NRC employee.

In response to the above, OIG conducted electronic records queries; reviewed NRC records; and conducted two interviews, including one of the subject pertaining to his source of income.

Records Review

On October 27, 2014, OIG in coordination with (b)(7)(C) (b)(7)(C) NRC, reviewed (b)(7)(C) personnel security/background information file and found (b)(7)(C) credit history reflected many revolving accounts (i.e., credit cards, loans, etc.) for different amounts (varying from \$500 to \$22,000), most of which were opened in recent years and already paid off.

Additionally, while there were several high amount student loans—the latest one for \$222,348 in which he appeared to be a guarantor, no other information related to the financial alerts discovered at this juncture of the investigation was found in (b)(7)(C) file.

On October 30, 2014, OIG conducted electronic records queries that verified information reported by SIGTARP to OIG.

Interview of (b)(7)(C) Supervisor

With the intent to learn about potential revenue alternatives available to (b)(7)(C) or whether he had access to NRC funds and/or financial information with which he could access NRC pecuniary resources, OIG interviewed (b)(7)(C) (b)(7)(C) direct supervisor (b)(7)(C) OCFO. (b)(7)(C) told OIG it was her understanding that

- (b)(7)(C) position and duties in the NRC does not give him access to NRC funds or financial accounts. Instead, (b)(7)(C) primary function involves preparing reports, coordinating the drafting of the new contracts, and the Home-Sales—where he serves as the communication link between the relocating NRC employee and the relocation company. Hence, (b)(7)(C) is not involved in the transfer of funds, payments, or price negotiations in any of the aforementioned activities.
- (b)(7)(C) received insurance money when his home was severely damaged by an electrical fire in summer of 2013. As a result, (b)(7)(C) lived in temporary housing until his insurance company rebuilt his house. Then, by the end of summer of 2014 (possibly the end of August 2014), (b)(7)(C) sold that house and moved into a smaller home (his current residence) in the (b)(7)(C) MD, area.

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Interview of (b)(7)(C)

Following up on the information learned from (b)(7)(C) interview, OIG interviewed (b)(7)(C) on December 17, 2014. Prior to any questionings, OIG advised (b)(7)(C) of both his *Garrity Warnings and Assurances*, and *Weingarten rights*. After reading the aforementioned form and acknowledging the understanding of its content, (b)(7)(C) freely and willfully waived his *Garrity* and *Weingarten* rights, and volunteered to OIG the following information:

- He (and his wife) have made many withdrawals and deposits at casinos and Automated Teller Machines (ATMs) as part of his (their) regular gambling activities. (b)(7)(C) and his wife are habitual slot machine player(s) who frequent casinos, such as the *Maryland Live Casino*, located at the Anne Arundel Mills Mall complex, Hanover, MD—where he is a member of the *Chairman's Club*. However, none of the deposits or withdrawal activities are linked to criminal acts or funded by money laundering activities, fraud, or criminal proceeds. (b)(7)(C) frequency of his gambling activities has increased since last year. His position at OCFO-NRC does not give him access to NRC's funds or financial accounts.
- (b)(7)(C) gambling activities have been funded with home insurance money (provided by USAA Bank, a remote-based FDIC insured financial institution) that he began to collect in approximately July 2013 as a result of a fire that caused approximately \$250,000 worth of damage to his former residence, located at (b)(7)(C) (b)(7)(C). As a result of this fire, (b)(7)(C) insurance funded his temporary quarters (for almost a year) and paid him more than \$40,000 in compensation/settlement checks. Additionally, his home insurance fully funded the reconstruction of his former residence, which he sold for \$600,000 (\$599,000 per *Zillow.com*) in October 2014. Per (b)(7)(C) he earned a profit of more than \$150,000 from this sale.
- Concurrently with the aforementioned home sale, (b)(7)(C) also obtained a 100-percent financed loan guaranteed by the U.S. Department of Veteran's Affairs (VA loan)—with a first payment set for September 2014—with which he bought a smaller home for \$500,000, in July 2014. (b)(7)(C) new home is located at (b)(7)(C)
- (b)(7)(C) prefers to finance his daily expenses with credit cards because it allows him to earn reward points. In addition, he also uses part of his gambling profits to pay his credit card bills. Examples of said gambling profits are evidenced by (b)(7)(C) receipt of G-1099's in 2013 and 2014.

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- (b)(7)(C) frequents casinos about four times a week, and spends an average of \$1,000. He has lost approximately \$75,000 to this date.

Review of Documents Provided by (b)(7)(C)

OIG confirmed the information (b)(7)(C) provided in his interview by reviewing the following documents that (b)(7)(C) willingly and voluntarily provided:

1. (b)(7)(C) (home sale) equity check issued in the amount of \$159,293.16.
2. A copy listing USAA insurance payments issued to (b)(7)(C) for an aggregate of \$68,262.29.
3. (b)(7)(C) G-1099 forms for 2013 and 2014 for \$1,233.00 and \$2,500.00, respectively.

On December 22, 2104, OIG confirmed via Zillow.com (an online real estate database) that (b)(7)(C) former residence was sold for \$599,000 on October 29, 2014, and (2) the purchase of his new residence took place on July 29, 2014, for \$500,000.00.

OIG briefed (b)(7)(C) NRC (b)(7) on this investigation, and will provide a copy of the closing memorandum to (b)(7)(C)

Because OIG did not identify criminal or employee misconduct in connection with (b)(7)(C) ATM withdrawals and deposits, it is recommended that this case be closed to the files of this office.

cc: (b)(7)(C) ADM/ (b)(7)(C)

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(b)(7)(C), (b)(7)(E)

Distribution:

Case File 15-003

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Historical File

OIG/AIGI	(b)(7)(C)	OIG/AIGI	OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)		(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
4/ /15	4/15/15	4/14/15	4/21/15	4/27/15	5/1/15	5/11/15


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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

November 8, 2016

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

FROM: 
Hubert Bell
Inspector General

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION REGION II
INSPECTOR ALLEGEDLY CONDUCTING A PRIVATE
BUSINESS DURING OFFICIAL DUTY HOURS (OIG CASE
NO. 15-019)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation (ROI) pertaining to an allegation that an NRC Region II employee was conducting a real estate business using Government equipment during work hours.

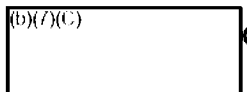
A copy of the ROI with exhibits is also attached for you to provide to the Office of the Chief Human Capital Officer.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the ROI nor its exhibits may be placed in ADAMS without OIG's written permission.

Attachments: Report of Investigation with Exhibits (plus one copy)

cc: , OGC w/exhibits
 ADM  w/exhibits

CONTACT:  OIG

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OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



U.S. Nuclear Regulatory Commission Region II Inspector Allegedly Conducting a
Private Business During Official Duty Hours

Case No. 15-019 /

(b)(7)(C)		(b)(7)(C)
(b)(7)(C)	Special Agent	(b)(7)(C) Team Leader


Joseph A. McMillan, Assistant Inspector General
for Investigations

11/2/16
Date

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STATUTES, REGULATIONS, AND POLICY

NRC Management Directive (MD) 2.7, Personal Use of Information Technology

Policy: It is the policy of the U.S. Nuclear Regulatory Commission to permit employees limited use of agency information technology for personal needs if the use does not interfere with official business and involves minimal or no additional expense to the NRC.

Handbook MD 2.7

Personal Use: An employee's activity that is conducted for purposes other than accomplishing official or otherwise authorized activity. NRC employees are specifically prohibited from using agency information technology to maintain or support a personal private business. Examples of this prohibition include employees using an agency computer and Internet connection to run a travel business or an investment service. The ban on using agency information technology to support a personal, private business also includes employees using agency information technology to assist relatives, friends, or other persons in such activities. Employees may, however, make limited use under this policy of agency information technology to, for example, check their Thrift Savings Plan or other personal investments, to seek employment, to communicate with a volunteer charity organization, or to file a Freedom of Information Act or Privacy Act request.

Inappropriate Personal Use: Use of information technology for commercial purposes or in support of "for-profit" activities or in support of other outside employment or business activity (e.g., consulting for pay, sales or administration of business transactions, sale of goods or services).

Inappropriate Personal Use: Any other activity that interferes with official duties.

Sanctions for Misuse: Unauthorized use of agency information technology could result in any or all of the following: loss of use or limitations on use of equipment, disciplinary or adverse actions, criminal penalties, and employee being held financially liable for the cost of improper use.

5 CFR § 2635.702 Use of public office for private gain

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including

nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations.

5 CFR § 2635.704 Use of Government property

- (a) Standard. An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.
- (b) Definitions. For purposes of this section:
 - (1) Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.
 - (2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

5 CFR § 2635.705 Use of official time

- (a) Use of an employee's own time. Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

18 USC § 1001 Statements or entries generally

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or

representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

18 USC § 287 False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

18 USC § 1343 Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

SUBJECT

(b)(7)(C)

(b)(7)(C)

Division of Reactor Projects, Region II
U.S. Nuclear Regulatory Commission (NRC)

ALLEGATION

The Office of the Inspector General (OIG), NRC, initiated this investigation based on several anonymous allegations that (b)(7)(C) then (b)(7)(C) (b)(7)(C) Region II, was operating a real estate business during official work hours and potentially using NRC Government technology and equipment to support her private business.

FINDINGS

OIG found that (b)(7)(C) used her Government-issued computer to conduct private business as a real estate agent associated with the (b)(7)(C) in Atlanta, GA. For example, (b)(7)(C) used her Government computer to email two NRC Region II employees in January 2013 and December 2011 to inquire if they were in the market for purchasing a property. In the emails, (b)(7)(C) offered her assistance as a real estate agent, and provided them with her real estate contact information. In several email exchanges between February and May 2012, (b)(7)(C) used her Government email account to email a then Office of Nuclear Reactor Regulation employee about real estate, for whom (b)(7)(C) ultimately completed a real estate sales transaction for the employee. In May 2014, (b)(7)(C) used her Government email account to communicate with a Region II (b)(7)(C) regarding real estate matters from which she earned a commission.

(b)(7)(C) also used her Government email account to forward real estate emails to her personal real estate business account. Specifically, (b)(7)(C) also forwarded real estate related emails from her Government account to (b)(7)(C)

OIG determined that between February and June 2015, (b)(7)(C) used her Government computer to visit the following real estate Web sites on 32 days out of a total of 134 calendar days:

- DocuSign.com,
- Fmls.com,
- Fmls.fusionsmls.com,

- Realestategalleryga.com,
- Email (b)(7)(C)
- Fmls.esignonline.net, and
- Agents.equator.com.

OIG also determined on two occasions between February 2015 and June 2015 (b)(7)(C) accessed the Internet via her Government computer to send real estate related documents via "DocuSign.com." OIG found that (b)(7)(C) maintained on her Government computer a copy of a loan application of a potential real estate client that included Internal Revenue Service forms and other documents containing sensitive personal information, including social security numbers.

OIG also determined that (b)(7)(C) represented six NRC Region II employees in real estate transactions. While (b)(7)(C) used her Government computer to exchange emails with two of the six employees she represented in a real estate transaction, all six employees maintained that (b)(7)(C) did not actively promote her real estate business or engage in real estate matters during work hours at the NRC Region II office.

(b)(7)(C) admitted that she sent documents through DocuSign for signature during work hours using the NRC Internet. She also admitted that the "main" Web sites she visits using the NRC Internet are her (b)(7)(C) email, DocuSign, and, First Multiple Listing Service (FMLS) accounts. (b)(7)(C) also stated she used her NRC computer to access the Internet to read real estate articles and to check on the status of real estate listings.

BASIS FOR FINDINGS

Review of NRC Internet Logs Using LogLogic

NRC uses (b)(7)(E) to log NRC Internet activity. The logs can be identified by the Internet Protocol (IP) address assigned to a user. The NRC Office of Information Systems advised OIG that the IP address assigned to (b)(7)(C) was (b)(7)(E) from January 2015 to July 22, 2015, and (b)(7)(E) from July 23, 2015 to January 2016. The IP address was changed because (b)(7)(C) requested a new computer in July 2015.

OIG reviewed NRC Internet (b)(7)(E) records for (b)(7)(C) Internet activity from February 2-3, 2015, and from March 2-3, 2015, and identified that she used her Government computer to visit the following real estate related Web sites:

- DocuSign.com,
- Fmls.com,
- Fmls.fusionsmls.com,
- Realestategalleryga.com,
- Fmls.esignonline.net,
- Agents.equator.com, and
- Email (b)(7)(C)

OIG reviewed additional (b)(7)(E) records to identify the number of days she visited these Web sites throughout 2015. This review identified that between February and June 2015, (b)(7)(C) visited these real estate related Web sites a total of 32 days out of 134 calendar days. The records did not indicate that (b)(7)(C) visited these Web sites from July to December 2015. [Investigative Note: (b)(7)(C) learned she was under investigation by OIG in May 2015 and she was interviewed by OIG in August 2015.]

(For further details, see Exhibits 1-3.)

Forensic Review of Government Computer

In August 2015, OIG conducted a computer forensic review of (b)(7)(C) NRC Government computer, number (b)(7)(E) (associated with IP address (b)(7)(E)). As noted above, (b)(7)(C) was assigned this new computer in July 2015. A review of Internet browsing history did not reveal visits to real estate related Web sites on this computer.

The following documents related to (b)(7)(C) work as a real estate agent were found on the computer:

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- Bank of America statement for (b)(7)(C) dated April 1, 2013, through April 30, 2013 [(b)(7)(C) U.S Office of Government Ethics (OGE) Form 450 indicates that she was a partner with this company from 2013 to 2014].
- Purchase and sale agreement dated May 8, 2013, indicating that (b)(7)(C) was the selling broker or broker's affiliated licensee for (b)(7)(C)
- Fax to (b)(7)(C) at (b)(7)(C) [(b)(7)(C) office fax number] dated May 8, 2014, which included a real estate loan application for a potential client. [Investigative Note: The loan application included Internal Revenue Service forms and other documents that contained sensitive personal information, including social security numbers.]

Also identified on (b)(7)(C) computer was a file containing archived emails related to her real estate business, including the following:

- Email dated September 2013 from (b)(7)(C) to her Government NRC email account (b)(7)(C)@nrc.gov regarding (b)(7)(C) (b)(7)(C) identifying a "Pre-Foreclosure Letter for Sellers."
- Email dated January 2010 from (b)(7)(C) to her Government NRC email account (b)(7)(C)@nrc.gov regarding (b)(7)(C) (b)(7)(C) "contract estimates" related to housing repairs.
- Email exchange from (b)(7)(C) Government email account to an NRC Region II employee, (b)(7)(C) between January 31, 2013, and February 1, 2013, inquiring if she was in the market for purchasing a property. In the emails, (b)(7)(C) offered her assistance as a real estate agent, and provided (b)(7)(C) with her real estate contact information.
- Email exchange between (b)(7)(C) and an NRC Region II employee, (b)(7)(C) (b)(7)(C) between December 20 and 21, 2011, inquiring if she was in the market for purchasing a property. In the emails, (b)(7)(C) offered her assistance as a real estate agent, and provided (b)(7)(C) with her real estate contact information.
- Email exchange in February 2012, between (b)(7)(C) and a former Office of Nuclear Reactor Regulation (NRR) employee, (b)(7)(C) during which (b)(7)(C) requested (b)(7)(C) assistance with purchasing a property in the Atlanta, GA, area. The email exchange referenced information regarding real estate and property listings.
- Email exchange in April 2012, between (b)(7)(C) and (b)(7)(C) referencing "7 Price Changes-Price Change E-mail Alert," in which (b)(7)(C) confirms she submitted two offers on a property for (b)(7)(C)
- Email exchange in May 2012, between (b)(7)(C) and (b)(7)(C) regarding a real estate offer being rejected.

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[Investigative Note: OIG identified through (b)(7)(E) and (b)(7)(C) (b)(7)(C) Web site email account that she conducted a real estate transaction for (b)(7)(C) in August 2012.]

(For further details, see Exhibit 4.)

OIG reviewed (b)(7)(C) NRC Government Email Account

OIG obtained from the Office of the Chief Information Officer (b)(7)(C) emails on the NRC network covering the period of February 1, 2014, to March 3, 2015, and identified the following relevant emails:

- An email dated April 15, 2014, from (b)(7)(C) (b)(7)(C) DRP, Region II, to (b)(7)(C) Government email address asking (b)(7)(C) to call her regarding a real estate attorney.
- An email dated April 22, 2014, forwarded from (b)(7)(C) Government email account to her (b)(7)(C) email account pertaining to verbiage for a real estate resume.
- Three emails dated May 27, 2014, between (b)(7)(C) Government email address and the personal email account of (b)(7)(C) (b)(7)(C) DRP, Region II, regarding real estate matters.
- Two emails dated May 27, 2014, forwarded from (b)(7)(C) Government email account to her (b)(7)(C) email account related to (b)(7)(C) real estate matters.
- Two emails dated June 18, 2014, that (b)(7)(C) sent to three Office of Personnel Management staff members in which she inquired about Federal Government Science, Technology, Engineering and Math (STEM) outreach efforts/initiatives in support of a non-profit business (the (b)(7)(C)) that, according to the emails, she and her husband started in 2008 to encourage young individuals to pursue careers in STEM fields.
- An email dated June 24, 2014, from (b)(7)(C) to former NRC Commissioner William MAGWOOD in which she inquired about Federal Government STEM outreach efforts/initiatives in support of the (b)(7)(C).
- An email dated February 11, 2015, from the personal email account of (b)(7)(C) (b)(7)(C) DRS, Region II, to (b)(7)(C) Government email address and her (b)(7)(C) email account, requesting a list of condominiums and townhouses for rent in the Decatur [Georgia] area.

(For further details, see Exhibit 5.)

Analysis of DocuSign.com Records

OIG compared (b)(7)(C) usage of DocuSign to her Internet history and time and attendance records to ascertain whether (b)(7)(C) used Government equipment to conduct real estate transactions through DocuSign. OIG learned that (b)(7)(C) used her Government equipment and Internet to access "DocuSign.com" on two occasions between February 2015 and June 2015, to send real estate related documents. Both of the transactions occurred during her approved core work hours; however, because (b)(7)(C) is on a flexible work schedule, OIG was unable to determine if she conducted the transactions on NRC time.

(For further details, see Exhibit 6.)

Analysis of Records from (b)(7)(C) Realtors

OIG subpoenaed (b)(7)(C) for records identifying real estate sales transactions, including times and dates of mortgage closings and home purchase closings conducted by (b)(7)(C) for the time period January 1, 2014, to August 1, 2015. Subpoenaed documents revealed that during this time period, (b)(7)(C) earned \$24,173.96 in commissions and \$500 in referrals, totaling \$24,673.96.

(For further details, see Exhibit 7.)

Review of (b)(7)(C) Confidential Financial Disclosure Reports

A review of (b)(7)(C) OGE Form(s) 450, Confidential Financial Disclosure Reports, showed that (b)(7)(C) reported receiving assets and income associated with (b)(7)(C) from 2013 to 2014 and listed (b)(7)(C) as an outside position from 2013-2015. (b)(7)(C) also reported (b)(7)(C) as an outside position, but did not report earning any income associated with the foundation.

(For further details, see Exhibits 8.)

Interviews of Region II Employees Who Participated in (b)(7)(C) Real Estate Transactions

By comparing information in (b)(7)(C) Web page with data in an NRC and a (b)(7)(E) database, OIG identified six Region II employees who participated in real estate transactions completed by (b)(7)(C). OIG interviewed each of the six employees to determine whether (b)(7)(C) promoted her real estate business or initiated any real estate related interactions during working hours and/or at the NRC Region II office. All six employees stated that (b)(7)(C) did not actively promote her real estate business or engage in real estate matters during work hours at the Region II

office. [Investigative Note: As previously noted, OIG identified that (b)(7)(C) used her Government computer to exchange emails with two of the six NRC Region II employees she represented in a real estate transaction. The two Region II employees confirmed that they essentially communicated through their personal email accounts and (b)(7)(C) (b)(7)(C) email account.]

(For further details, see Exhibit 9 - 15.)

Interview of (b)(7)(C)

(b)(7)(C) (b)(7)(C), Region II, told OIG that she supervised (b)(7)(C) during her past two assignments in Region II branches, which included the (b)(7)(C) branch and the (b)(7)(C) branch where, until recently, (b)(7)(C) was a (b)(7)(C) (b)(7)(C) was (b)(7)(C) branch chief in (b)(7)(C) from February 1, 2015, until her promotion to a (b)(7)(C) (b)(7)(C) position. At the time of the OIG interview in April 2015, (b)(7)(C) said (b)(7)(C) was under her supervision while she (b)(7)(C) was transitioning into her new position.

(b)(7)(C) advised OIG that (b)(7)(C) teleworks 1 day per week (Thursdays) and that is on the "NewFlex work schedule" from 7 a.m. to 3:45 p.m. (b)(7)(C) said (b)(7)(C) is conscientious about reporting her leave during the week and about contacting her (b)(7)(C) if she will be late for work. She said (b)(7)(C) sometimes reports to the office in the morning, takes leave during the middle of the day, and then reports back to work later that day. According to (b)(7)(C) is a "really hard worker" and (b)(7)(C) does not have to "watch over" her. She said (b)(7)(C) "gets her work done," and "if we had a lot of (b)(7)(C) at NRC, we'd get a lot more done."

(b)(7)(C) said she became aware of (b)(7)(C) real estate business because someone at NRC said that their realtor was (b)(7)(C). (b)(7)(C) said no one has voiced any concerns to her about (b)(7)(C) conducting a private business during work hours.

(For further details, see Exhibit 16.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG she began working for NRC in June 2006. Her work schedule is Monday through Friday from 7 a.m. to 3:45 p.m., but she also earns credit hours.

(b)(7)(C) said she has been a licensed real estate agent with (b)(7)(C) for 5 1/2 years. She and her husband also have a non-profit business (b)(7)(C) (b)(7)(C) that is geared toward tutoring and public speaking with young students to encourage careers in STEM fields. She said (b)(7)(C) goals align with some of NRC's values and initiatives for outreach.

With regard to (b)(7)(C) said she has done some public speaking at high schools during work hours and her management granted her excused absence. (b)(7)(C) told OIG that the Region II Human Resource Division (HRD) advised her that there is an NRC policy that allows supervisors to grant a limited amount of excused absence to support activities directly related to enhancing awareness of STEM careers and interest. [Investigative Note: Following her OIG interview, (b)(7)(C) emailed a copy of the email from her Region II HRD referencing an NRC announcement, August 23, 2012 – *NRC Employee Resources: Workplace Flexibilities Available to Participate in Volunteer Activities*, which states, "for volunteer activities that are directly related to the NRC's mission and/or in the NRC's interest (such as explaining NRC's functions to school groups), supervisors may consider granting a limited amount of excused absence for occasional, brief periods of time to participate in the volunteer activity" as it relates to STEM.] (b)(7)(C) said if she leaves work to attend an event for her non-profit that is not related to NRC initiatives, she will take leave. (b)(7)(C) told OIG she does not make any income from (b)(7)(C). She said she has received excused absences to participate in some STEM related events; however, she was never paid to participate in these events.

(b)(7)(C) said her NRC management is aware that she has a real estate and non-profit business. However, she is not aware if her management was aware that she sometimes conducts real estate business from her NRC office space. (b)(7)(C) said she has several real estate related accounts through (b)(7)(C), such as an email account (b)(7)(C) or (b)(7)(C), (b)(7)(C) office page (b)(7)(C), Multiple Listings Service account [also known as FMLS.com], and DocuSign account (DocuSign.com).

(b)(7)(C) said she does not "typically" use the NRC Internet or equipment to conduct work for her private business, but she occasionally checks her (b)(7)(C) emails from her NRC computer. (b)(7)(C) said she has used her NRC computer to read real estate articles, check on new information in the real estate industry, and check for new properties on the market. She did not know how often she used her NRC computer to visit these accounts or Web sites. However, she said if she needed a break from her NRC work, she would use her NRC computer to look at real estate related things. (b)(7)(C) said she went on her MLS account and (b)(7)(C) email account daily, but not always using her NRC computer. Instead, she said she might use her cell phone to check these accounts during NRC work hours or after work hours.

(b)(7)(C) said she has used DocuSign for personal and business matters and she has sent documents through DocuSign for signature during work hours for personal and business related matters. (b)(7)(C) said the times she would send a document through DocuSign during work hours she would be on a break. (b)(7)(C) said her process for sending a document through DocuSign typically takes 3 to 5 minutes and involves (1)

selecting the document from her MLS account, (2) saving it to her computer, and (3) if a signature is needed, uploading the document to DocuSign and sending it through the system. (b)(7)(C) stated that she does not necessarily go to DocuSign daily and she only uses it when she needs to send a document.

(b)(7)(C) stated that her FMLS account allows her to view new real estate properties in a particular neighborhood. She said she will search for new properties, sold properties, sales price, comps on the properties, and view different real estate related reports.

(b)(7)(C) stated that fmls.fusionmls.com is the same as fmls.com; however, fusionmls.com is a different screen with the same information. (b)(7)(C) stated that she may visit her FMLS account on her two breaks that could last up to 30 minutes total per day.

(b)(7)(C) said she “may” have used her NRC computer to view agent.equator.com. She said this Web site shows a listing of short sales and foreclosures, and permits communication through the site. (b)(7)(C) said she receives emails through her (b)(7)(C) (b)(7)(C) account, which has a link to “equator,” and this allows her to correspond with real estate agents/companies. (b)(7)(C) did not know how often she visited this site at work, but said she may have responded to an email or attached a document which could have taken a few minutes.

(b)(7)(C) said the “main” Web sites she visits over the NRC Internet are her (b)(7)(C) email account, DocuSign account, and FMLS account. (b)(7)(C) could not recall any other real estate related Web sites she visited on a “regular basis” during work hours.

(b)(7)(C) said when she opens a Web site on the NRC Internet, she typically leaves it open unintentionally [i.e., tends to open the Web site but forgets to close it]. (b)(7)(C) said she rarely took her NRC laptop home, so she eventually exchanged it for a desktop.

(b)(7)(C) said her real estate schedule is more “hectic” after NRC working hours and on weekends, which is when she does most of her real estate business. (b)(7)(C) said if she has a client who wants to see properties during the work day, she uses credit hours or annual leave. If she has a client whose schedule cannot be adjusted around her work schedule, (b)(7)(C) will often ask another real estate agent at the (b)(7)(C) (b)(7)(C) office if they can take her client and she will pay them a fee.

(b)(7)(C) said she did not believe she has ever used her NRC email account to send real estate related emails. However, when OIG presented the emails sent from her Government email account regarding real estate, she acknowledged having done so and explained the basis for the emails. (b)(7)(C) told OIG she had real estate clients who work at NRC and are also personal friends. (b)(7)(C) said the only reason she

would send a real estate related email to a client's NRC email account was because they requested to receive emails at that account. She said she usually sent emails through her (b)(7)(C) email account.

(For further details, see Exhibits 17-18.)

Coordination with Department of Justice

OIG referred this investigation to the U.S. Attorney's Office for the Northern District of Georgia and the U.S. Attorney's Office for the Western District of Washington for criminal prosecution. Both offices declined prosecution in lieu of administrative action.

LIST OF EXHIBITS

1. Memorandum to File, Review of (b)(7)(E) Logs February 2-3, 2015 and March 2-3, 2015, dated June 10, 2016, with attachments.
2. Memorandum to File, IP Address and Computer Changes July 2015, dated May 6, 2016.
3. Memorandum to File, Review of NRC Internet Logs for Internet Activity of (b)(7)(C), dated June 24, 2016.
4. Memorandum to File, Forensic Review of NRC Computer Assigned to (b)(7)(C) (b)(7)(E) IP Address (b)(7)(E) dated September 23, 2015, with attachments.
5. Memorandum to File, Review of Email, (b)(7)(C) NRC User (b)(7)(C) dated August 7, 2015, with attachments.
6. Memorandum to File, Review of Responsive Documents, Court Order No. GJ15-243, dated July 27, 2016, with attachment.
7. Memorandum to File, Review of Responsive Documents, Subpoena OIG-2015-06, dated February 18, 2016, with attachments.
8. Memorandum to File, Review of the Confidential Financial Disclosure Reports for (b)(7)(C) dated August 11, 2015.
9. Memorandum to File, Assessment of (b)(7)(C) Potential Involvement with NRC Employees Real Estate Transaction, dated February 18, 2016, with attachment.
10. Transcript of Interview of (b)(7)(C) dated September 19, 2016.
11. Transcript of Interview of (b)(7)(C) dated September 19, 2016.
12. Transcript of Interview of (b)(7)(C) dated September 19, 2016.
13. Transcript of Interview of (b)(7)(C) dated September 19, 2016.
14. Transcript of Interview of (b)(7)(C) dated September 20, 2016.
15. Memorandum of Interview, (b)(7)(C) dated October 24, 2016.
16. Transcript of Interview of (b)(7)(C) dated April 29, 2015.

17. Transcript of Interview of (b)(7)(C) dated August 19, 2015.
18. Memorandum of Interview, Telephonic Interview of (b)(7)(C) dated March 15, 2016, with attachments.

Distribution
Case File 15-019

Magnum

OIG (b)(7)(C)	OIG	(b)(7)(C)	OIG	OIG	OIG	OIG
				J. McMillan	D. Lee	H. Bell
10/27/16	11/10/16	1/1/16	10/28/16	11/2/16	11/17/16	11/18/16

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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

September 30, 2015

MEMORANDUM TO: Mark A. Satorius
Executive Director for Operations

FROM: 
Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL IMPROPER STORAGE OF OFFICIAL NRC
ELECTRONIC DOCUMENTS (OIG CASE NO. 15-021)

Attached are two copies of an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation pertaining to potential improper storage of official NRC electronic documents.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the Report of Investigation nor its exhibits may be placed in ADAMS without the written permission of the OIG.

Attachment: Report of Investigation w/ exhibits (two copies)

cc: (b)(7)(C) OGC w/ exhibits
(b)(7)(C), ADM (b)(7)(C) w/o exhibits

CONTACT: (b)(7)(C) OIG

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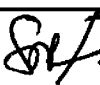
OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



Potential Improper Storage of Official NRC Electronic Documents

OIG Case No. 15-021

(b)(7)(C)	(b)(7)(C)
(b)(7)(C)	Special Agent
(b)(7)(C)	Team Leader
(b)(7)(C)	
	09/25/15
Joseph A. McMillan, Assistant Inspector General for Investigations	Date

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STATUTES, REGULATIONS, AND POLICY

NRC MD 12.5 - NRC AUTOMATED INFORMATION SECURITY PROGRAM

POLICY:

(a) It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to implement and maintain an agency-wide automated information security program to protect information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to ensure -

Confidentiality, that is, preserving authorized restrictions on access and disclosure, including the means for protecting personal privacy and proprietary information;

Integrity, that is, guarding against improper information modification or destruction and ensuring information non-repudiation and authenticity;

Availability, that is, ensuring timely and reliable access to and use of information.

(b) The information security protections shall be commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of information or information systems that are operated, maintained, or sponsored by the agency.

NRC Agency-wide "Rules of Behavior for Authorized Computer Use" Version 1.2

3.1 System Access and Use

- Follow established procedures for accessing information, including the use of user identification (ID), authentication information and other physical and logical safeguards.
- Follow established procedures for requesting and disseminating information.
- Users Shall Not, place unauthorized software onto an NRC computing resource.
- Users Shall Not, Use any computing resource to process NRC information unless it has been authorized by the DAA.
- Users Shall Not, Connect a computing resource to any system, including infrastructure systems, without DAA authorization.

3.3 Electronic Data Protection

- The user is responsible for protecting the confidentiality, integrity, and availability of NRC information and files. Storage, disposal, mailing, and electronic transmission of sensitive information shall be in accordance with Federal and NRC policies and directives. For a complete list of Federal and NRC policies and directives related to this policy, please refer to Appendix A - References. Users shall not create or maintain a Privacy Act system of records (e.g., files of individuals retrievable by name and/or personal identifier) on an NRC system without approval of the NRC Senior Agency Official for Privacy. Users shall protect sensitive unclassified non-safeguards information (SUNSI) documents in accordance with guidance located at <http://www.internal.nrc.gov/sunsi/index.html>.

3.3.1 Electronic Personally Identifiable Information

- Users shall . . . Ensure that PII retrieved by an individual's name or other personal identifier is maintained in an authorized Privacy Act system of records for which a system notice has been published in the Federal Register.
- User shall not . . . Remove electronic NRC sensitive data (including PII) from NRC controlled spaces unless it is appropriately encrypted using an NRC approved cryptographic method. SecureZip and MXI Stealth thumb drives are two examples of approved methods for encrypting and storing electronic NRC sensitive data.
- User shall not . . . Use personally owned computing resources for processing or storing PII of individuals pertaining to NRC official business other than themselves, except as formally (i.e., in writing as an official record) approved by the DAAs.
- User shall not . . . E-mail or otherwise transmit PII outside of the NRC's infrastructure, except when necessary to conduct agency business. E-mailing PII within the NRC LAN or wide-area network is acceptable, including to and from BlackBerry handheld devices that interact within the NRC's e-mail system.

3.11 User Accountability

- Unauthorized use of a user account or a computing resource can result in criminal penalties under Section 1030, Title 18, of the United States Code. Users will be held accountable for their access and use of NRC computing resources.

SUBJECT

(b)(7)(C)

International Operations Branch
Office of International Programs
U.S. Nuclear Regulatory Commission

ALLEGATION

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an anonymous allegation that (b)(7)(C) was maintaining a copy of the Office of International Programs (OIP) G-drive on a personal thumb drive.

FINDINGS

OIG found that (b)(7)(C) used a personally owned external computer hard drive to store all information maintained on OIP's G-drive without obtaining NRC authorization to do so, and he brought the hard drive back and forth between NRC and his residence. OIP maintains a variety of sensitive unclassified information on its G-drive, including documents received from foreign countries and a (b)(7)(E) Database that tracks foreign nationals who come to work for NRC, internal/external NRC reports to the Department of State and the Department of Energy, a password protected Passport Database, and the NRC (b)(7)(E) database).

OIG also found that (b)(7)(C) used a personal thumb drive to transfer pdf files from his home computer to his NRC computer without NRC authorization to do so.

OIG found that (b)(7)(C) downloaded/stored the NRC (b)(7)(E) (b)(7)(E) (database) on his home computer without permission to do so. Although the system contains primarily information that is publicly available, the system also tracks sealed source material and, due to security concerns, the addresses where source material is located are not publicly available.

(b)(7)(C) admitted that he used these unauthorized devices to store and transfer sensitive NRC information and was not authorized to do so and that he was aware that authorization was required. He backed up OIP's G-drive information onto the hard drive as part of an NRC Continuity of Operations (COOP) exercise, and used the thumb drive to bring posters to work that he designed at home using software that NRC would not provide him with.

BASIS FOR FINDINGS

Interview of

(b)(7)(C)

(b)(7)(C) supervisor, (b)(7)(C) OIP, told OIG that (b)(7)(C) is OIP's (b)(7)(C) person, and that he (b)(7)(C) for OIP. (b)(7)(C) described (b)(7)(C) as a computer expert, very knowledgeable about different systems, and the contact person for any technology/computer related questions. (b)(7)(C) said (b)(7)(C) has access to the same programs that all OIP employees have access to on OIP's network, with the exception of some password protected files.

(b)(7)(C) stated (b)(7)(C) told her he was going to conduct an analysis of the OIP G-drive to determine how many files were maintained on the G-drive and how old the files were. When asked if (b)(7)(C) conducted an analysis of the OIP G-drive as part of a COOP exercise, she said he never mentioned that to her. (b)(7)(C) said she was not aware that (b)(7)(C) was going to use a personally owned external hard drive to perform the analysis of the G-drive. She became aware that (b)(7)(C) was using an external hard drive and thumb drive to store records from the OIP G-drive and to transfer files between work and home when she was contacted by the OIG and (b)(7)(C) also informed her that he was interviewed by OIG concerning this matter. (b)(7)(C) told OIG that no one authorized (b)(7)(C) to use his personally owned external hard drive or provided him with authorization to use a personally owned thumb drive. (b)(7)(C) said (b)(7)(C) told her he wiped his personally owned hard drive clean after being contacted by OIG to meet because he wanted to show OIG that he was not maintaining this information.

(b)(7)(C) further stated that OIP's G-drive contains information that is publically available in ADAMS; sensitive unclassified non-safeguards information (SUNSI), some of which is password protected; and official use only information (OUO). She said the G-drive does not contain classified information.

(b)(7)(C) also stated that (b)(7)(C) often works from home because he prepares a newsletter called (b)(7)(C) for a list of NRC subscribers. She did not know the specifics of how he prepares the newsletter. (b)(7)(C) was aware that (b)(7)(C) used a personal computer to work from home before being assigned an NRC laptop. However, she was unsure if (b)(7)(C) was currently using his NRC laptop or his personal computer at home.

OWENS further stated that she was not aware that (b)(7)(C) had saved the NRC OIP's License Correspondence Tracking System (database) from the OIP G-drive on

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his home computer, and she did not see the need for this because he has access to the OIP G-drive while teleworking. (b)(7)(C) told OIG that the information in the database is not sensitive; it tracks dates when an application was received, dates a letter was sent, dates when information was received from other offices, and/or dates when licenses were issued or when a final action was taken.

(For further details, see Exhibits 1, 2, and 3.)

Interview of (b)(7)(C)

(b)(7)(C) OIP, told OIG that the OIP G-drive contains all the NRC international bilateral agreements with classifications such as Official Use Only, Proprietary, and SBU (Sensitive but Unclassified, which is a State Department Classification). (b)(7)(C) told the OIG that (b)(7)(C) has backed up the OIP G-drive for years for the OIP office; however, she did not know how he performed the backup. (b)(7)(C) recalled (b)(7)(C) being present at a staff/management meeting where they discussed (b)(7)(C) backing up the OIP G-drive.

(b)(7)(C) said that the NRC (b)(7)(E) (database) is used as an internal organizational tool for tracking the application number, identity of the applicant, country dates, destination, material and quantity, and Special Nuclear Material. However, the database also tracks sealed source material and due to security concerns, the addresses where the source material is held (storage location) are non-public.

(For further details, see Exhibit 4.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG he is responsible for information management within OIP. He maintains several tracking systems that OIP utilizes, such as the export/import licensing tracking system (NRC OIP's License Correspondence Tracking System (database)), NRC OIP SharePoint site, and NRC OIP's Web site. He also authors/distributes the (b)(7)(C) newsletter.

(b)(7)(C) admitted to backing up the OIP G-drive onto a personally owned encrypted external hard drive, a Western Digital Passport Drive, in connection with a COOP exercise but did not recall when this occurred. He carried the external hard drive back and forth between his home and work, and the external hard drive was always in his possession. (b)(7)(C) deleted the OIP G-drive files from the hard drive immediately, 2 or 3 days after backing up the G drive to perform his test for the COOP

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(b)(7)(C) exercise. (b)(7)(C) mentioned to (b)(7)(C) that he backed up the OIP G-drive after the backup was complete. He never transferred any information stored on the hard drive to a personal computer or to any non-NRC employees, and never printed any information from the hard drive or emailed any information stored on the hard drive.

(b)(7)(C) stated that the information he backed up on the external hard drive included the Foreign Assignee Database that tracks foreign personnel who come to work at the NRC, the export/import licensing database that tracks all export/import licenses, reports that NRC sends to the State Department and Department of Energy, the Ticket Database, and the Passport Database. (b)(7)(C) told OIG that he realized that the OIP G-drive contained sensitive internal information after he backed up the OIP G-drive and noticed that NRC added a banner on the internal assignee reports from the Foreign Assignee Database displaying that this information was sensitive.

(b)(7)(C) admitted he used an unauthorized personal thumb drive to transfer PDF files from his home computer to his NRC computer. He designed unclassified posters for an NRC conference on his home computer using the program, Adobe Illustrator, which NRC refuses to provide him with. (b)(7)(C) has only done this three or four times using his personal thumb drive.

(b)(7)(C) also admitted that the NRC OIP's License Correspondence Tracking System (database) was downloaded on his personal computer because he was unable to gain access to it through CITRIX prior to getting a NRC laptop to carry home.

(b)(7)(C) added that the database was no longer on his personal computer and the database may have been on his personal computer for a month or so before he deleted it.

(b)(7)(C) stated that he did not receive authorization from NRC to use his personally owned external hard drive or thumb drive. He also did not receive authorization from his management to back up the OIP G-drive or transfer files from his thumb drive, and did not receive authorization to download/save the NRC OIP's License Correspondence Tracking System (database) on his personal computer. However, he was aware that he needed authorization from NRC to use a personally owned external hard drive and/or thumb drive. (b)(7)(C) said that he never applied for a NRC authorized thumb drive because "they never work."

(b)(7)(C) stated that he wiped his personal hard drive clean after OIG contacted him to be interviewed because he thought it was best to do so, so that when OIG examined it, it would be clean. [Investigative Note: When a file is deleted, it is no longer visible. When a drive is wiped (i.e., formatted) it is overwritten with either zeros

or random data, making it much harder for data to be recovered.] At the conclusion of the interview, (b)(7)(C) provided verbal and written consent for OIG agents to search his personally owned external hard drive.

(For further details, see Exhibits 5 and 6.)

Forensic Review and Analysis of (b)(7)(C) External Hard Drive

OIG conducted a forensic review of (b)(7)(C) personally owned external Western Digital My Passport, Universal Serial Bus (USB), 1 Terabyte (TB) Hard Drive to determine whether it contained any NRC related information. OIG's analysis indicated that the device was formatted on April 1, 2015, at 10:50 p.m. [Investigative Note: The device was formatted 1 day prior to (b)(7)(C) scheduled interview with OIG on this matter.] The formatted folders did not contain any documents. A search of unallocated space did not reveal any documents. [Investigative Note: The absence of documents from the device is consistent with (b)(7)(C) testimony that he wiped the drive.]

(For further details, see Exhibit 7.)

Interview of (b)(7)(C)

(b)(7)(C) Computer Security Office (CSO), told OIG that NRC employees are permitted to maintain information from their program office network drives on a hard drive/thumb drive only if it is an encrypted NRC-issued device. She said it is a violation for employees to maintain information from their program office network drives on a personal device unless the employee receives authorization to use his or her personally owned device. (b)(7)(C) confirmed that if an employee is storing NRC material on his or her personal devices, it constitutes a violation that CSO will handle.

(b)(7)(C) confirmed that all implementation, including use of specific thumb drives, must be authorized by the NRC Designated Approving Authority. In addition, thumb drives must be in compliance with CSO-STD-2004/Electronic Media and Device Handling.

(For further details, see Exhibit 8.)

Review of (b)(7)(C) Official Personnel Security File

OIG reviewed (b)(7)(C) official personnel security file and learned that prior to his employment with NRC, (b)(7)(C) was employed by the International Atomic Energy Agency in Vienna, Austria, from 1971 to 1985. (b)(7)(C) joined NRC on February 3,

1985, as an International Analyst. (b)(7)(C) was granted a "Q" clearance on April 15, 1985. He was also granted access to Sensitive Compartmented Information (SCI) and assigned a Secure Internet Protocol Routing Network (SIPRNet) account. [Investigative Note: When granted access to SCI, employees are authorized to enter the Sensitive Compartmented Information Facility to view classified emails and reports.] On July 22, 2013, (b)(7)(C) security clearance was downgraded to an "L" clearance. There were no security infractions on record for (b)(7)(C).

(b)(7)(C) personnel file noted that he was born in (b)(7)(C) and moved to (b)(7)(C) with his mother (b)(7)(C) and sister when he was 10 years old. It was noted that "he has not held dual citizenship with any other foreign country or issued a passport by a foreign country."

The NRC Information Security Branch noted that (b)(7)(C) last logged into his NRC's SIPRNet account on September 28, 2012, and his SIPRNet account was disabled on June 5, 2014.

(For further details, see Exhibits 9 and 10.)

LIST OF EXHIBITS

1. Transcript of Interview of (b)(7)(C), dated May 13, 2015.
2. Memorandum to File, Telephone Conversation with (b)(7)(C) dated March 3, 2015.
3. Memorandum to File, Verification of the NRC OIP's License Correspondence Tracking System (database), dated July 20, 2015.
4. Memorandum of Interview of (b)(7)(C) dated April 6, 2015.
5. Transcript of Interview of (b)(7)(C) dated April 2, 2015.
6. Transcript of Interview of (b)(7)(C) dated June 26, 2015.
7. Memorandum to File, Forensic Imaging of External Hard Drive, dated May 5, 2015.
8. Memorandum to File, Telephone Conversation with (b)(7)(C) dated March 18, 2015.
9. Memorandum to File, Review of (b)(7)(C) Personnel Security Folder, dated September 14, 2015.
10. Memorandum to File, SIPRNet Account Access Information- (b)(7)(C) (b)(7)(C) dated April 6, 2015.

MEMORANDUM TO: Mark A. Satorius
Executive Director for Operations

FROM: Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL IMPROPER STORAGE OF OFFICIAL NRC
ELECTRONIC DOCUMENTS (OIG CASE NO. 15-021)

Attached are two copies of an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation pertaining to potential improper storage of official NRC electronic documents.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the Report of Investigation nor its exhibits may be placed in ADAMS without the written permission of the OIG.

Attachment: Report of Investigation w/ exhibits (two copies)

cc: (b)(7)(C) OGC w/ exhibits
(b)(7)(C) ADM (b)(7)(C) w/o exhibits

CONTACT: (b)(7)(C), OIG

Distribution:

File Location: (b)(7)(C), (b)(7)(E)

Case File 15-21 Historical File MAGNUM

OIG/AIGI	OIG/AIGI	(b)(7)(C)	OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
9/3/15	9/4/15	9/24/15	9/25/15	9/25/15	9/28/15	9/29/15

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OFFICE OF THE
INSPECTOR GENERAL

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 2, 2015

MEMORANDUM TO:

(b)(7)(C)
OCHCO
(b)(7)(C)
OGC
(b)(7)(C)
ADM

FROM:

(b)(7)(C)
Joseph A. McMillan (b)(7)(C)
Assistant Inspector General
for Investigations

SUBJECT:

POTENTIAL IMPROPER STORAGE OF OFFICIAL NRC
ELECTRONIC DOCUMENTS (OIG CASE NO. 15-021)

Attached is a revised cover memorandum pertaining to a Report of Investigation involving potential improper storage of official NRC electronic documents. The report was previously addressed to the Executive Director for Operations and is being reissued to the NRC Chairman because it pertains to an employee assigned to the Office of International Programs. Both the report and exhibits are unchanged.

CONTACT: (b)(7)(C) OIG

Attachment: As stated

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OFFICE OF THE
INSPECTOR GENERAL

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 30, 2015

MEMORANDUM TO: Chairman Burns

FROM:


Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL IMPROPER STORAGE OF OFFICIAL NRC
ELECTRONIC DOCUMENTS (OIG CASE NO. 15-021)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation pertaining to potential improper storage of official NRC electronic documents. The report was previously addressed to the Executive Director for Operations and is being reissued to you because it pertains to an employee assigned to the Office of International Programs. Both the report and exhibits are unchanged.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the Report of Investigation nor its exhibits may be placed in ADAMS without the written permission of the OIG.

Attachment: Report of Investigation w/ exhibits

cc: (b)(7)(C) OGC w/ exhibits
(b)(7)(C) ADM (b)(7)(C) w/o exhibits

CONTACT: (b)(7)(C) OIG

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Distribution:

File Location:

(b)(7)(C), (b)(7)(E)

(b)(7)(E)

Case No.15-21

Historical File

Magnum

OIG/AIGI	OIG/AIGI	(b)(7)(C)		OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)				(b)(7)(C)	J. McMillan	D. Lee	H. Bell
				10/2/15	10/2/15	10/2/15	10/2/15

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

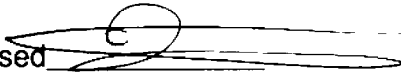
WASHINGTON, D.C. 20555-0001



OFFICE OF THE
INSPECTOR GENERAL

March 1, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Senior Special Agent, (b)(7)(C)

SUBJECT:

FALSE INFORMATION PROVIDED TO OI DURING ITS H&I
INVESTIGATION OF LICENSEE (OIG CASE NO. 15-24)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was based on an allegation from (b)(7)(C) an Indian Point Energy Center (IPEC) employee, that IPEC managers provided false information to the NRC Office of Investigations (OI) during an OI investigation into (b)(7)(C) allegation that IPEC discriminated against him for raising safety concerns. (b)(7)(C) provided two specific examples from OI investigation report, case number 1-2012-045. He also raised a question as to why NRC Region I (RI) administratively closed a different allegation he had raised (RI-2014-A-0015) and requested that NRC continue the investigation.

Findings

OIG determined that the investigation conducted by RI's Office of Investigation into (b)(7)(C) allegations was not inadequate.

OIG learned through its review of OI's Investigative Report, Case No. 1-2012-045 (this report reflects the results of OI's investigation into RI's allegation number RI-2012-A-0040), that based on the totality of the documentation and testimony obtained during its investigation, OI found insufficient evidence to conclude that (b)(7)(C) was

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discriminated against for raising safety concerns. With regard to the examples provided by (b)(7)(C) OI discovered that although IPEC management could not produce evidence that (b)(7)(C) had been unprofessional with vendors, he was unprofessional with IPEC staff during his rating period, which placed him on a Performance Improvement Plan (PIP). Furthermore, the issues that (b)(7)(C) brought up regarding the finance office did not fall under NRC's purview.

OIG also found that RI administratively closed allegation RI-2014-A-0015 after it was informed by the Department of Labor (DOL) that since (b)(7)(C) elected to proceed in the U.S. District Court, the Occupational Safety and Health Administration (OSHA) (a DOL agency) was dismissing his complaint. OIG learned that RI had informed (b)(7)(C) that they would maintain his file open to monitor DOL decisions. (b)(7)(C) was also informed by RI that he did not articulate a pattern of facts as described in 10 CFR 50.7, Employee Protection, and therefore did not have a prima facie case of discrimination.

Basis for Findings

Background

On December 20, 2013, OI issued an investigative report (OI Case No. 1-2012-045) titled "Discrimination Against a (b)(7)(C) for Having Raised Safety Concerns," reflecting the results of OI's investigation to determine whether (b)(7)(C) a (b)(7)(C) at IPEC, was discriminated against for raising safety concerns. (b)(7)(C) had alleged that after raising safety concerns to IPEC security management, his 2011 job performance was rated as unsatisfactory, which placed him on a PIP and subsequently affected his salary and bonus. The report stated that based on the evidence developed during the course of the investigation, OI did not conclude that (b)(7)(C) was discriminated against for raising safety concerns.

On March 18, 2014, (b)(7)(C) NRC RI, wrote to (b)(7)(C) (reference number RI-2014-A-0015) in reference to four email messages had sent to OI RI in February and March of 2014, in which (b)(7)(C) asserted that IPEC had continued a retaliation campaign against him for previously engaging in protected activity. The letter said (b)(7)(C) had stated he had been offered a position, which he knowingly accepted, without being told it would be too physical for his Americans with Disabilities Act (ADA) protection and he was not even offered an interview for another position that he had performed while in the security organization. In the March 18, 2014, letter, (b)(7)(C) informed (b)(7)(C) that NRC was not initiating an investigation into his assertion of alleged ongoing discrimination because he had not articulated a pattern of facts to satisfy the elements of 10 CFR 50.7, Employee Protection, and NRC would not initiate an investigation into his assertion of

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discrimination because the job/responsibilities that (b)(7)(C) voluntarily assumed “do not constitute an adverse action (in the form of constructed discharge).” In addition, (b)(7)(C) wrote that the issues raised in (b)(7)(C) emails “do not constitute new NRC protected activities.” However, NRC wrote that it had received a discrimination complaint that (b)(7)(C) had filed with DOL against Entergy (IPEC licensee) and would therefore maintain this file (RI-2014-A-0015) open to monitor DOL decisions.

On June 26, 2014, (b)(7)(C) wrote to (b)(7)(C) (reference number RI-2012-A-0040) transmitting the results of a RI follow-up to a concern (b)(7)(C) raised pertaining to OI Case No. 1-2012-045. Enclosure 1 to the letter reflected NRC’s conclusion that NRC was unable to obtain sufficient evidence to conclude that (b)(7)(C) was discriminated against for raising safety concerns. Enclosure 1 also included the following with regard to (b)(7)(C) downgraded performance rating:

... your manager testified that you received a lower rating because of complaints about your unprofessional behavior when dealing with vendors and with employees of the IP finance department. The IP (b)(7)(C) (b)(7)(C) testified that you had interacted with her staff on three occasions in the rating period during which you exhibited loud, demanding, and unprofessional behavior. The (b)(7)(C) stated that she complained to your management after each occurrence. Regarding unprofessional behavior with vendors, IP management was unable to provide any documentation related to your unprofessional behavior towards vendors.

In a letter to (b)(7)(C) dated August 20, 2014, (reference number RI-2012-A-0040), NRC responded to a July 25, 2014, email (b)(7)(C) had sent to (b)(7)(C) that “indicated that statements made to the NRC by the (b)(7)(C) and the (b)(7)(C) (b)(7)(C) regarding your ‘unprofessionalism’ were false, and as a result, you stated that these individuals provided false information to the NRC during an investigation.” In the August 20, 2014, letter, (b)(7)(C) (b)(7)(C) stated that the (b)(7)(C) and (b)(7)(C) statements regarding (b)(7)(C) “unprofessionalism” were just a portion of testimonial and documentary evidence that NRC had considered to reach its conclusion and stated that “corroborating evidence was obtained regarding your unprofessional behavior” and it elaborated briefly on details that led to NRC’s conclusion.

The letter also noted that interviewees are placed under oath and their testimony is transcribed to ensure that testimonial evidence gathered during an investigation is factual and based on the exact statements made by the interviewees. (b)(7)(C) was informed that if interviewees are willing to perjure themselves, evidence to the contrary would have to be uncovered to substantiate that this had occurred. The letter said NRC

stood by its previous conclusion that it was unable to obtain sufficient evidence to conclude (b)(7)(C) had been discriminated against for raising nuclear safety concerns and “absent specific evidence from you that individuals provided false information to OI investigators, we plan no further action on this matter.

On March 9, 2015, OSHA sent a letter to (b)(7)(C) OI, informing her that as a result of (b)(7)(C) electing to proceed with his case in Federal Court, rather than before the Secretary of Labor, his complaint before OSHA was dismissed.

In a letter to (b)(7)(C) from NRC, dated March 10, 2015, (b)(7)(C) was informed that NRC planned no further action in his discrimination allegation and had administratively closed the file since it was dismissed by OSHA.

Review of OI Case

OIG’s review of OI Investigative Report Case No. 1-2012-045 indicated that OI conducted interviews with IPEC (b)(7)(C) managers regarding (b)(7)(C) job performance. The report indicated that (b)(7)(C) had received an Accountability Letter for failing to maintain his qualifications in accordance with EN-TQ-212 expectations, which dealt with his Control of Safeguards Information Qualification. This letter was issued to (b)(7)(C) on June 8, 2011. Furthermore, the report had indicated that (b)(7)(C) supervisor (b)(7)(C) was having performance issues with (b)(7)(C) which caused (b)(7)(C) to be put on a PIP to which (b)(7)(C) agreed.

The report further indicated that (b)(7)(C) had also been unprofessional with a vendor but that (b)(7)(C) could not produce any documentation substantiating this claim. OIG learned through communications with the RI (b)(7)(C) that OI was later contacted by an IPEC attorney who provided the name of the possible vendor with whom (b)(7)(C) engaged unprofessionally. OIG learned that OI interviewed the vendor, who characterized (b)(7)(C) behavior with him as aggressive, but did not state that (b)(7)(C) was unprofessional in his dealings with him. The report also noted that the (b)(7)(C) had reported to (b)(7)(C) that (b)(7)(C) was unprofessional with her staff on three instances. (b)(7)(C) was interviewed by OI investigators and stated that (b)(7)(C) had exhibited loud, demanding, and unprofessional behavior towards her in approximately March 2011, and that this behavior had continued into 2012 when (b)(7)(C) was dealing with her staff. The report indicated that (b)(7)(C) in all three instances had reported his behavior to (b)(7)(C). She further communicated to the OI investigator that in all three cases (b)(7)(C) intentions were good but his interactions with people needed improvement.

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Interviews

On May 19, 2015, (b)(7)(C) AES, RI informed OIG that (b)(7)(C) initial complaint of ongoing discrimination (R-2014-A-0015) was found not to be a prima facie case of discrimination by the regional counsel as explained to (b)(7)(C) in their acknowledgement letter to him dated March 18, 2014, and as a result it was not investigated. (b)(7)(C) further communicated to OIG that RI never opened an investigation and left his file administratively open only to monitor the DOL process. When DOL dismissed (b)(7)(C) case, RI formally closed their file in accordance with their process.

(b)(7)(C) told OIG that as of May 19, 2015, his office had not received any new information or evidence of wrongdoing as claimed by (b)(7)(C) in his email, dated July 25, 2014.

OIG learned in communication with (b)(7)(C) that (b)(7)(C) issues related to the finance department (i.e., gas card, fuel bills, security vehicles having to be parked for lack of fuel and improper payment of New York sales tax) did not fall under NRC purview. These issues brought forth to OIG by (b)(7)(C) were never brought forth to RI by (b)(7)(C).

On October 8, 2015, OIG contacted (b)(7)(C) regarding this investigation. (b)(7)(C) related he had not provided any new information concerning this allegation to the NRC since communicating with them in 2014. (b)(7)(C) stated he understood that his case with DOL was closed since he decided to pursue his allegation of discrimination in Federal Court and that RI formally closed as a result of DOL dismissing the case. (b)(7)(C) stated that the court ordered mediation on his claims, and that he is currently going through mediation of his allegations that he had reported to NRC to include his discrimination claim. (b)(7)(C) had no additional information regarding his original allegation other than that OI should have reviewed three headquarters corporate responses he wrote regarding waste/misuse of funds concerning fuel cards and other matters. He suspected that the (b)(7)(C) lied to OI when interviewed regarding his unprofessionalism because the corporate responses he wrote involved areas for which the (b)(7)(C) was responsible. (b)(7)(C) also told OIG he had submitted a new, different allegation to NRC on August 14, 2015, regarding a "nuclear safety concern." He reported that the licensee used a clamp in vapor containment that was not designated as a safety grade item. He also said that on October 6, 2015, he went to the (b)(7)(C) to report that he is experiencing retaliation for having reported the safety concern. He is waiting to see what, if any, NRC will take regarding his new allegations.

Conclusion

Because OIG did not identify evidence of inadequacy in OI Region I's investigation into (b)(7)(C) allegations or in its administrative closure of a different allegation from (b)(7)(C) after (b)(7)(C) opted to pursue the matter through OSHA, it is recommended that this matter be closed to the files of this office.

File Location: (b)(7)(E)
(b)(7)(E)

Distribution

Case File 15-024

Jan - 2/19/16
2/29/16
Historical File

Magnum

OIG	OIG	OIG	OIG	OIG	OIG
(b)(7)(C)		(b)(7)(C)	<i>[Signature]</i> J. McMillan	<i>[Signature]</i> D. Lee	<i>[Signature]</i> H. Bell
2/10/16	2/29/16	2/29/16	3/1/16	3/17/16	3/17/16

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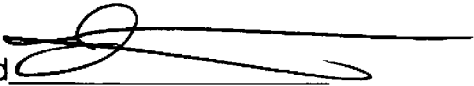


OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

August 3, 2016

MEMORANDUM TO:

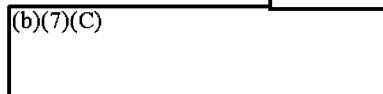
Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)


Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)


Special Agent, (b)(7)(C)

SUBJECT:

CONCERNS REGARDING U.S. NUCLEAR REGULATORY
COMMISSION MANAGEMENT OVERSIGHT
PERTAINING TO POTENTIAL INSPECTION FINDINGS AT
(b)(7)(C) (OIG CASE NO. 15-26)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted this investigation based on an anonymous allegation that (b)(7)(C) (b)(7)(C) Division of Reactor Projects (DRP), Region II (RII) made the following statement to (b)(7)(C) at (b)(7)(C) in violation of the NRC Reactor Oversight Process (ROP): "Because VC Summer is a good running plant, that if the licensee places the findings into the corrective action program (CAP), that the (b)(7)(C) do not need to document Green findings."

Potential violations relevant to this allegation are provisions in 5 CFR 2635, Standards of Conduct, and NRC ROP.

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Findings

OIG could not substantiate whether or not (b)(7)(C) instructed (b)(7)(C) not to document Green findings. Although OIG found that three (b)(7)(C) said (b)(7)(C) told them not to document Green findings under certain circumstances, two other (b)(7)(C) said they did not receive such instruction from (b)(7)(C). In addition, a branch chief who sought clarification from (b)(7)(C) conveyed to (b)(7)(C) that (b)(7)(C) intent had been for inspectors not to spend a lot of time on minor issues and, if a finding is greater than minor (i.e., Green), to call it and move on. (b)(7)(C) maintained to OIG that he never told (b)(7)(C) not to document Green findings; rather, his message was that in cases where (b)(7)(C) could not decide whether a finding was minor or Green, to make a decision and move on. OIG noted that none of the (b)(7)(C) who said (b)(7)(C) instructed them not to document Green findings under certain circumstances followed this instruction. OIG briefed Region II management concerning the apparent misunderstanding of guidance related to Green findings. OIG learned that the Office of Nuclear Reactor Regulation (NRR) is establishing new guidelines for determining what is minor or more than minor.

Basis for Findings

NRC Inspection Manual Chapter 0612, "Power Reactor Inspection Reports," provides guidance on documenting power reactor inspections and findings. It states that a minor violation is a violation associated with a minor performance deficiency, does not warrant enforcement action, and is not normally documented in inspection reports. A Non-Cited Violation (NCV) is a finding that is characterized as Green (very low safety significance). Such findings are documented as violations, but are not cited in notices of violation, which normally require written responses from licensees.

OIG's review of information contained in NRC's Digital City – Dynamic Web Page, for the 5-year time period of May 13, 2010, to May 13, 2015, identified that Region II issued 855 Green NCVs, compared to 735 in Region I; 1,131 in Region III; and 1,539 in Region IV.

NRC Staff Interviews

(b)(7)(C) told OIG in May 2015 that (b)(7)(C) told him in April 2015 during a plant visit, and in the presence of another (b)(7)(C) that if we (b)(7)(C) were "to identify a performance deficiency that was more than minor (Green), and the licensee had placed the issue under a corrective action program, we could just let it go." (b)(7)(C) stated (b)(7)(C) was not referring to a specific issue, but was talking about future

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performance deficiencies. However, (b)(7)(C) said he did not follow (b)(7)(C) instructions to not document Green findings if the licensee was putting the performance deficiency in the CAP. (b)(7)(C) stated that he informed his supervisor, (b)(7)(C) (b)(7)(C) DRP, RII, of the conversation he had with (b)(7)(C). He relayed that he told (b)(7)(C) that he challenged (b)(7)(C) on that comment, and that that was the reason that the Government Accountability Office report came out, and that this kind of philosophy is what leads to a reduction in Green findings by (b)(7)(C) and it would mean not following process.

(b)(7)(C) told OIG that (b)(7)(C) was giving (b)(7)(C) counseling, and was just trying to reiterate Region II's philosophy on how to handle issues and approaches to being as efficient as possible, and how to document things. He stated that he was in the room when (b)(7)(C) stated, "If they (b)(7)(C) put something in the corrective action program, you know, and it's a Green issue, we shouldn't even write it up." (b)(7)(C) stated that what (b)(7)(C) said is counter to what the ROP says. (b)(7)(C) stated he has never followed (b)(7)(C) instructions to not document Green findings if the licensee was putting the performance deficiency in the CAP.

(b)(7)(C) told OIG in August 2015, that he met with (b)(7)(C) on March 2, 2015, at (b)(7)(C) and (b)(7)(C) told him that because there were going to be lean times with the agency, (b)(7)(C) needed to prioritize the work and use his resources efficiently, and that with respect to Green findings, as long as the licensee was putting the performance deficiency in its CAP, he did not need to document the finding. He further stated that (b)(7)(C) stated that if the issues were Greater Than Green, he needed to focus on the significant issues. (b)(7)(C) told OIG he was not following the direction of (b)(7)(C) to not document any future green findings if the licensee was putting the performance deficiency in its CAP.

He stated that they were notified by the VC Summer (b)(7)(C) about what (b)(7)(C) had told them about not documenting Green findings and that he, too, was dumbfounded by what (b)(7)(C) had reportedly related regarding green findings.

(b)(7)(C) said that (b)(7)(C) NRR, had attended the Integrated Counterpart meeting in June 2015 and made similar but not identical remarks regarding prioritization and how the agency needed to focus its resources. He said she did not explicitly state not to document Green findings, but she was supporting this prioritization.

[Investigative Note: OIG's review of (b)(7)(C) presentation during the RII Security Counterpart seminar indicated that (b)(7)(C) message to the audience was that

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inspectors should not spend much time on minor findings when there are major issues that they could be inspecting. (b)(7)(C) stated in the video that due to budget constraints, inspectors need to work on major issues and not spend a lot of time on minor issues.]

He stated that he is not following (b)(7)(C) guidance and is not aware of anyone else following (b)(7)(C) direction regarding Green findings. He was not aware if NRR was planning to change the chapter manuals to reflect not documenting Green findings. He stated that his branch chief, (b)(7)(C) is aware of the verbal guidance that (b)(7)(C) has given to the resident inspectors. He stated that they have not received any guidance from (b)(7)(C) or (b)(7)(C) regarding Green findings.

(b)(7)(C) stated that she met with (b)(7)(C) in March 2015 at (b)(7)(C) and he did not make any statements to her regarding Green findings. She stated that it was not until June 2015, while attending the Region II Spring 2015 Resident and Regional Inspectors - Integrated Counterpart Meeting (June 2-4), that the topic of Green findings came up. She said during a presentation by (b)(7)(C) the audience of inspectors were told that inspectors should be looking at issues of concern greater than minor and should not be too concerned with minor performance deficiencies if the licensee places them in the CAP.

(b)(7)(C) told OIG that (b)(7)(C) had mentioned to him that he had a visit from (b)(7)(C) about a couple or few weeks before he (b)(7)(C) visited (b)(7)(C) in the mid-April 2015 timeframe. He stated that at that point the take-away (b)(7)(C) had from (b)(7)(C) was, "don't focus a lot on issues if they are going to end up just being Green, that we really want to focus on the high-risk issues that are going to be Greater Than Green."

(b)(7)(C) said he offered to (b)(7)(C) that he would go back to the region and talk to (b)(7)(C) directly about what he meant by those kind of statements, and then get back to (b)(7)(C) on what he meant. (b)(7)(C) said that he responded back to (b)(7)(C) and informed him that what (b)(7)(C) meant by that statement was, "Don't spend a lot of time on minor issues and if it's greater or more than minor, then call it and move on." He said he also told (b)(7)(C) that he never heard (b)(7)(C) say, "if it is Green, don't worry about it."

He advised that during division meetings, the issue of Green findings had come up periodically in the context that "we don't want to spend a lot of time – if we know it is green, then we don't need to spend a lot of time pushing, you know, to further that."

(b)(7)(C) said that they are not neglecting Green findings and are still going through the same ROP process, but that they are just not spending extra time on determining what is going to be a Green finding.

(b)(7)(C) told OIG that while attending the counterpart meeting in June 2015, (b)(7)(C) made comments about Green findings in the context of do not spend a lot of time on Green findings. He said he thought people perceived her comments the wrong way. He said that the whole intent was if one looks at the ROP process, there are some things that are more safety significant than others. Furthermore, he heard that some residents took that as do not write any Green findings.

(b)(7)(C) stated that (b)(7)(C) on his visits to (b)(7)(C) never discussed Green findings with him. (b)(7)(C) relayed his personal opinion is that Green findings are very low safety significance, but they are data points.

(b)(7)(C) told OIG that RII DRP has had a lot of discussion over whether a performance deficiency is minor versus Green, and this takes up a lot of their time. So, they have been trying to go through what the criteria means for minor or more than minor. He stated that when he goes to plant sites to talk to (b)(7)(C) about their weekly inspections, he tells them that they should pick those things that are most significant, those that impact public health and safety the most.

He said he did not want (b)(7)(C) wasting their time looking at issues of lower significance when there are things of higher significance. He stated that when (b)(7)(C) are looking at something that is on that threshold between minor and more than minor, he wants them to pick one. He wants them to make a decision because they are spending money and time in an area where it really does not matter that much; and they need to make a call and move on.

(b)(7)(C) said he never told one of his (b)(7)(C) "that if it was a good running plant, don't bother documenting the Green findings." Instead, (b)(7)(C) said he conveyed that if the (b)(7)(C) is at a site, and it is a good operating plant, and they are a very responsive licensee, and they have a good, healthy corrective action program, then why would the inspector question whether an issue is minor? Why are they so concerned that if you do not make it Green, it is not going to get fixed? He stated that it would be different if the region "had concerns about the licensee's corrective action program," and if the licensee "was not a good performing licensee....But if you are at a site where that is not the case,...it doesn't matter to me whether you call it Green or whether you make it more than minor. Do it and move on. We are spending time on issues that are very

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low safety significance when there is a whole lot of other things out there that we can be looking at.”

In addition, (b)(7)(C) told OIG that (b)(7)(C) look at less than 1 percent of the activities at their sites. He said that (b)(7)(C) have many options on what to inspect. He wants them to pick issues that are important and not to waste time on issues that are not. If it is a good CAP, and the issue is placed in the CAP, and they are confident it is going to be fixed, then they should move on. (b)(7)(C) stated that he never told any (b)(7)(C) not to document Green findings. His message to them was to make the call on the finding and move on.

(b)(7)(C)
(b)(7)(C) NRR, told OIG that once a (b)(7)(C) samples and screens an item that was placed in the licensee's CAP, he/she does not have the option to not issue an NCV or not to document the item if it is more than minor. She also stated that the Office of Enforcement delegated its powers of enforcement to the region's division directors and branch chiefs. Resident inspectors do not have the authority to issue violations.

(b)(7)(C) told OIG that a (b)(7)(C) does not have flexibility in the issuance of Green findings because once the (b)(7)(C) samples and screens an issue, and it screens Green in the ROP flow chart, then it must be documented. She stated that the only time that an (b)(7)(C) does not have to document a Green finding is if the licensee self-identified the item of concern and it would have been a non-cited violation.

(b)(7)(C) said the (b)(7)(C) are to look at samples that are risk significant and meet the requirements of the baseline inspection program. She said that (b)(7)(C) are not to be mining the CAP to see how many violations they can write up against the licensee since the CAP is a voluntary program under the ROP. (b)(7)(C) are supposed to be looking for risk significant and problematic issues that would jeopardize the safety and adequate protection of the public. She further stated that not all items placed in the CAP are safety related or have to do with the safe operation of the reactor. She stated that some items placed in the CAP could relate to Occupational Safety and Health Administration issues.

(b)(7)(C) said that directing a (b)(7)(C) not to document a Green finding is contrary to the ROP and whether or not a (b)(7)(C) made such a statement would depend in the context of the conversation and how that message was received by the (b)(7)(C). As to why Region II had less green findings than other regions, (b)(7)(C) stated it could be based on the threshold used by that region in screening the issue of concern or performance deficiency. She said that NRR is trying to work on that

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issue by establishing new guidelines for (b)(7)(C) to determine what is minor or more than minor.

During separate meetings in November 2015, OIG briefed then-incoming Region II

(b)(7)(C)

and (b)(7)(C) on the investigation. OIG advised Region II (b)(7)(C) of the apparent perceptions and/or misunderstanding that some inspectors had pertaining to Green findings.

Because OIG did not substantiate misconduct by (b)(7)(C) and NRC Region II senior management was briefed on the results of this investigation, it is recommended that this case be closed to the files of this office.

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Case File 15-026

Magnum

OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG <i>EA</i> J. McMillan	OIG D. Lee	OIG H. Bell <i>HB</i>
07/8/16	07/8/16	07/9/16	07/8/16	7/28/16	8/3/16	1/16	8/4/16

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OFFICE OF THE
INSPECTOR GENERAL

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 28, 2015

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

(b)(7)(C)

FROM:  Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL HARASSMENT OF NRC EMPLOYEE BASED ON
A PERSONAL CONDUCT ISSUE (OIG CASE NO. 15-027)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation (ROI) pertaining to an anonymous letter distributed to female NRC employees at NRC headquarters containing derogatory personal comments about an Office of Nuclear Reactor Regulation employee. A copy of the ROI with exhibits is also attached for you to provide to the Office of the Chief Human Capital Officer.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the ROI nor its exhibits may be placed in ADAMS without OIG's written permission.

Attachments: ROI w/ exhibits (plus one copy)

cc: (b)(7)(C) OGC/ (b)(7)(C) w/exhibits
(b)(7)(C) ADM/ (b)(7)(C) w/exhibits

CONTACT: (b)(7)(C) OIG, (b)(7)(C)

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OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



**Potential Harassment of NRC Employee
Based on a Personal Conduct Issue**

OIG Case No. 15-027

(b)(7)(C)	(b)(7)(C)
(b)(7)(C)	(b)(7)(C)
Special Agent	Team Leader
(b)(7)(C)	<i>SR</i> 12/18/15
Joseph A. McMillan, Assistant Inspector General for Investigations	Date

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STATUTES, REGULATIONS, AND POLICY

5 CFR, Section 735.203 – What are the Restrictions on Conduct Prejudicial to the Government?

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

SUBJECT

(b)(7)(C)

(b)(7)(C)

Office of Nuclear Reactor Regulation (NRR)
U.S. Nuclear Regulatory Commission (NRC)

ALLEGATION

The Office of the Inspector General (OIG), NRC, initiated this investigation after learning that on May 8, 2015, and May 11, 2015, respectively, two NRC female employees at NRC headquarters in Rockville, MD, found an anonymous letter in their workstation containing derogatory personal comments about (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

NRR.

FINDINGS

OIG found that (b)(7)(C) created and distributed a document containing inflammatory and derogatory comments about (b)(7)(C) to approximately 5 to 10 female headquarters employees. For example, the document referred to (b)(7)(C) as a "known wife beater" and stated, "please stay away from him and do not let yourself get in a position where you are alone with him (i.e., a conference room, closed office, or elevator)."

BASIS FOR FINDINGS

Interviews of Witnesses

(b)(7)(C) NRR, told OIG that on May 8, 2015, at approximately 10:30 a.m., she found a letter on her chair in her cubicle, located at (b)(7)(C) in the One White Flint North (OWFN) building. OIG reviewed the note, which stated the following:

Ladies,

I wanted to make you aware of a possible safety threat. A known "wife beater" has been relocated from OIP to (b)(7)(C) and is sitting on your floor and/or and working in (b)(7)(C). He was arrested and charged with domestic assault last year, but found not guilty (I've been told because his wife did not testify against him). The arrest for assaulting his wife (he tried to strangle her) is a matter of public record, so I'm not disclosing anything the general public wouldn't already know if they read the local Frederick County papers or searched online.

His name is (b)(7)(C)

I believe that any man who assaults his wife is dangerous and has anger issues especially when interacting with women. For your safety please stay away from him and do not let yourself get in a position where you are alone with him (i.e., a conference room, closed office, or elevator).

I am sending you this letter anonymously, because I fear for my safety if he found out I had warned you about him. Again, this is all on public record, if you choose to corroborate the information.

(b)(7)(C) showed the letter to (b)(7)(C) (b)(7)(C) and informed her supervisor, (b)(7)(C) (b)(7)(C).

(b)(7)(C) did not know who wrote the letter and did not know of anyone else who received a similar letter.

(For further details, see Exhibit 1.)

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(b)(7)(C)
(b)(7)(C) NRR, told OIG she found a letter concerning (b)(7)(C) the morning of May 11, 2015, on her chair inside her cubicle located in (b)(7)(C) OWFN.

(For further details, see Exhibit 2.)

Interview of (b)(7)(C)

(b)(7)(C) said he was arrested in July 2014 for assaulting his current wife, (b)(7)(C). (b)(7)(C) He self-disclosed the information to the NRC (b)(7)(C) in accordance with NRC requirements. He was assigned to work at home in July 2014 as a result of the arrest. He was found not guilty in November 2014 and subsequently allowed to return to working at NRC headquarters in May 2015. Prior to this incident he was working on the fourth floor of OWFN and as of May 2015, he was assigned to the seventh floor of OWFN.

On May 8, 2015, (b)(7)(C) received a call from his supervisor, (b)(7)(C) who advised him that a female employee in (b)(7)(C) office found a letter on her chair that day addressed to "Ladies" and alleging (b)(7)(C) was a "wife beater" and women working with him should stay away from him for their own safety.

OIG asked (b)(7)(C) who he thought might have written the document/flyer. He provided names of three NRC employees: (b)(7)(C) Office of International Programs (OIP); his former wife, (b)(7)(C), NRR; and (b)(7)(C) NRR.

(b)(7)(C) said he and his current wife (b)(7)(C) got into an argument in July 2014, but reconciled shortly after. They have since been on vacations together and have had no problems.

(b)(7)(C) said that contrary to information in the letter, he never beat his wife. He said he and (b)(7)(C) got into an argument in July 2014, but reconciled shortly after.

They have since been on numerous vacations together and have had no problems.

(b)(7)(C) feels that someone distributing documents/flyers in the workplace stating that he is a "wife beater" is false and inappropriate and he felt harassed by it. He said it will affect his working relationship with people because they will have a preconceived opinion of him.

(This report refers to (b)(7)(C) as (b)(7)(C) and to his current wife and former wife by their first and last names.)

(For further details, see Exhibits 3 and 4.)

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Interview of (b)(7)(C)

(b)(7)(C) OIP fourth floor in OWFN, told OIG she had no involvement with the letter concerning (b)(7)(C) was (b)(7)(C) supervisor prior to May 2015. In July 2014, (b)(7)(C) learned that (b)(7)(C) was arrested for a matter outside of the workplace, which was assault on his wife. (b)(7)(C) was instructed to work from home until further notice. (b)(7)(C) was assigned duties and was required to check in with (b)(7)(C) daily via email.

In October 2014, (b)(7)(C) issued a Notice of Proposed Removal to (b)(7)(C) for performance issues. (b)(7)(C) continued to work from home until May 2015 pending the outcome of the proposed removal.

(For further details, see Exhibit 5.)

Interview of (b)(7)(C)

(b)(7)(C) divorced from (b)(7)(C) since 2010, told OIG that she was aware that her friend, (b)(7)(C) had informed some of the women on the seventh floor that (b)(7)(C) was moving to their location, and that they should be concerned for their safety. (b)(7)(C) and (b)(7)(C) worked on the seventh floor of OWFN. (b)(7)(C) said she supported the action taken by (b)(7)(C) because she agreed the women should be informed for their safety. (b)(7)(C) thought that (b)(7)(C) had delivered a message to the women via email or told them in person. She was unaware that (b)(7)(C) left a letter on their chairs. (b)(7)(C) believes (b)(7)(C) is dangerous because he was abusive to her during their marriage years ago. She said she and (b)(7)(C) share custody of their two children, and she interacts with him because of their children. Although the divorce was finalized in 2010, she, (b)(7)(C) and their two children later went on vacations together and stayed in the same hotel room in 2011 and 2012. (b)(7)(C) said she did it for the benefit of their children so that they could experience the vacations together as a family. She stated he recently acted abusive to her at a baseball game their son was participating in. When asked to describe the abusive actions, she said that (b)(7)(C) told her not to roll her eyes at him. She responded saying she did not roll her eyes, and he told her, "oh just shut up."

(b)(7)(C) said (b)(7)(C) learned that (b)(7)(C) was abusive because she told her. (b)(7)(C) said (b)(7)(C) has only met (b)(7)(C) once or twice. (b)(7)(C) said she does not want (b)(7)(C) to get in trouble on her behalf.

(b)(7)(C) said that she also told her supervisor that (b)(7)(C) was abusive to her during their marriage and that women at NRC should be aware. She told her supervisor and others when she learned that (b)(7)(C) was charged with assault in July 2014.

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(b)(7)(C) said (b)(7)(C) has not displayed abusive behavior to her in the workplace at NRC. However, she was told by (b)(7)(C) that (b)(7)(C) displayed anger toward his female supervisor last year.

(For further details, see Exhibits 6 and 7.)

Interview of (b)(7)(C)

OIG showed (b)(7)(C) the letter provided by (b)(7)(C) told OIG she created the letter and distributed copies of it to 5 to 10 female employees. She used a Government printer to print the letters, and distributed them while she was being paid to conduct official Government work.

(b)(7)(C) said she distributed the letter for the safety of the female employees after learning (b)(7)(C) was reassigned to their floor in May 2015. She believed (b)(7)(C) was violent against women based on information she initially learned from her supervisor and (b)(7)(C) stated that her supervisor, (b)(7)(C) called her in July 2014 and informed her (b)(7)(C) was arrested for assault on his current wife (b)(7)(C) and instructed (b)(7)(C) to contact (b)(7)(C) to make sure she and her children were okay. (b)(7)(C) told her she had been physically assaulted by (b)(7)(C) prior to their divorce in 2010.

She said (b)(7)(C) had nothing to do with the letter she distributed, and she did it of her own volition.

(b)(7)(C) stated one reason she was afraid (b)(7)(C) might harm her was because the NRC Active Shooter Training showed one scenario with an estranged spouse coming into the workplace to harm his former wife, and shooting anyone he passed on the way. She was afraid (b)(7)(C) would harm her if he learned she distributed the letters.

(For further details, see Exhibits 8 and 9.)

Coordination with Office of Administration

(b)(7)(C), Office of Administration, told OIG that in approximately July 2014, she learned (b)(7)(C) was arrested. (b)(7)(C) took action by removing his access to classified information. However, she did not remove his access to the building. (b)(7)(C) indicated the decision to place (b)(7)(C) on telework status was primarily made by his former supervisor (b)(7)(C).

(For further details, see Exhibit 10.)

Coordination with the Office of the Chief Human Capital Officer

(b)(7)(C)

(b)(7)(C)

Office of the Chief Human Capital Officer (OCHCO), told OIG he learned that [redacted] was arrested in July 2014. As a result, [redacted] was assigned to work at home. Although the court found [redacted] "Not Guilty" in November 2014, he did not return to the office at that time. This was because a proposal for removal had been issued to [redacted] for failing to perform at a level for which he was being paid, which was GG-15. It took time for the deciding official, [redacted] OIP, to review the proposal and make a final determination. OCHCO also required time to relocate [redacted] to a different supervisor. On May 3, 2015, [redacted] made a final decision to downgrade [redacted] to GG-14. On this same day, [redacted] was allowed to return to the office.

(b)(7)(C)

[redacted] assigned [redacted] to work in OWFN. [redacted] was aware that [redacted] former wife, [redacted] also worked in OWFN. [redacted] did not think this was a problem because he was aware that [redacted] and [redacted] shared custody of their children and met frequently, unsupervised, outside of the workplace, to exchange their children.

(For further details, see Exhibits 11 and 12.)

EXHIBITS

1. Memorandum of Interview, Interview of (b)(7)(C) dated May 12, 2015.
2. Memorandum of Interview, Interview of (b)(7)(C) dated May 13, 2015.
3. Memorandum of Interview, Interview of (b)(7)(C) without attachments, dated May 19, 2015.
4. Memorandum of Interview, Interview of (b)(7)(C) without attachments, dated July 9, 2015.
5. Memorandum of Interview, Interview of (b)(7)(C) dated July 9, 2015.
6. Memorandum of Interview, Interview of (b)(7)(C) dated May 27, 2015.
7. Memorandum of Interview, Interview of (b)(7)(C) dated June 29, 2015.
8. Transcript of Interview, Interview of (b)(7)(C), dated May 28, 2015.
9. Memorandum to File, Addendum to (b)(7)(C) Interview, dated September 2, 2015.
10. Memorandum of Interview, Interview of (b)(7)(C) dated August 21, 2015.
11. Memorandum of Interview, Interview of (b)(7)(C) dated July 1, 2015.
12. Notice of Proposed Removal, dated October 31, 2014.

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File Location: (b)(7)(C), (b)(7)(E)

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Case File 15-27

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OIG (b)(7)(C)	(b)(7)(C)		OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG J. McMillan	OIG D. Lee	OIG H. Bell
12/18/15	12/18/15		12/19/15	12/18/15	12/18/15	12/18/15	12/21/15	12/23/15

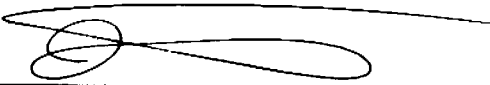
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

March 2, 2016

MEMORANDUM TO: Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)
Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)
Special Agent, (b)(7)(C)

SUBJECT: ALLEGED CIRCUMVENTION OF ALLEGATION REVIEW
BOARD PROCESS BY OFFICE OF INTERNATIONAL
PROGRAMS STAFF (OIG CASE NO. 15-30)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an allegation by (b)(7)(C) Senior Special Agent, Office of Investigations (OI), NRC, that (b)(7)(C) (b)(7)(C) Office of International Programs (OIP), NRC, did not follow agency policy in reporting an alleged wrongdoing by a licensee to the Office of Enforcement (OE) rather than the Allegation Review Board (ARB). Specifically, (b)(7)(C) alleged that (b)(7)(C) had twice bypassed the ARB while handling allegations of exports of nuclear material without proper licensing by energy firm Schlumberger (STC). (b)(7)(C) stated that (b)(7)(C) most recently circumvented the ARB process after STC exported tritium to Iraq without the appropriate license.

Potential violation relevant to this allegation is failing to follow guidance in Management Directive (MD), 8.8, "Management of Allegations."

Finding

OIG did not substantiate misconduct by (b)(7)(C). OIG found that (b)(7)(C) was following a longstanding (b)(7)(C) practice of referring allegations believed to be obvious violations directly to OE instead of to an NRC Office Allegation Coordinator (OAC) so that an ARB could be convened. OIG learned that the allegation was subsequently provided to an OAC and incorporated into an existing OI investigation pertaining to the company. However, NRC later learned it did not have jurisdiction over the matter alleged.

Basis of Findings

MD 8.8, "Management of Allegations," states that an OAC is a designated staff member in a regional or headquarters office who serves as the point of contact for that office regarding the processing of allegations. An ARB is a board established by regional administrators and headquarters office directors to determine the safety significance and appropriate NRC followup for each allegation. MD 8.8 also states that after receiving an allegation, staff in headquarters offices that do not have an OAC shall transfer the allegation to an assigned, responsible OAC in an action office, who shall coordinate and track the actions taken in response to the allegation (e.g., Nuclear Security and Incident Response-related and Office of New Reactors-related allegation processing is coordinated by the Office of Nuclear Reactor Regulation OAC, and OIP-related allegation processing is coordinated by the Office of Nuclear Material Safety and Safeguards [NMSS] OAC).

According to NRC Enforcement Policy, 2.2.5 Export and Import of Nuclear Equipment and Material, NRC will normally take enforcement action for violations of the agency's export and import requirements in 10 CFR Part 110, "Export and Import of Nuclear Equipment and Material."

OIG learned that in 2005, STC self-reported to NRC wrongful exports of nuclear material to Libya, an embargoed nation not permitted to receive radioactive material. (b)(7)(C) presented this matter to an OE panel and violation letters were sent to STC. In 2008, OI opened an investigation into STC in response to a Boston Globe newspaper article reporting that STC had evaded sanctions against Iran, another embargoed country, by sending the nation technology containing nuclear components; that investigation remains open.

In December 2014, OIP staff determined that STC exported tritium to Iraq, also an embargoed country, without the proper license. (b)(7)(C) requested Region IV OE panel time to review this alleged wrongdoing, but did not refer the allegation to (b)(7)(C).

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(b)(7)(C) NMSS OAC, for OIP-related allegation for processing. OI subsequently added this allegation to its original investigation of STC after learning of the matter from Region IV.

(b)(7)(C) told OIG that as the NMSS OAC, she has received allegations against licensees for exporting nuclear materials without the appropriate licenses and exporting materials to embargoed countries. (b)(7)(C) said the office's technical staff determines if the allegation will be routed to OE or the ARB, and (b)(7)(C) is considered part of OIP's technical staff. She believed that if the allegation is a clear violation by a licensee, it may be sent directly to OE, bypassing the ARB process. (b)(7)(C) became aware of the allegation when (b)(7)(C) contacted her about the allegation. She then contacted (b)(7)(C) and provided him an ARB intake worksheet to complete on February 25, 2015.

(b)(7)(C) OE, who authored the Allegation Manual, told OIG that this matter should have been presented to the ARB and could not think of a reason why it was not. (b)(7)(C) said allegations of wrongdoing are to be brought to the attention of the OAC, who will then convene an ARB. He said that (b)(7)(C) is OIP's designated OAC.

(b)(7)(C) Region IV, stated that on February 19, 2015, (b)(7)(C) requested from her, via email, OE panel time regarding the allegation, but the panel never took place, as she was aware that OI Region IV was conducting an investigation into STC and forwarded the email to the OI Region IV (b)(7)(C) She also forwarded the email to Region IV management in the Division of Nuclear Material Safety.

OIG learned that OI ended its investigation into STC's tritium export to Iraq as the matter did not fall under NRC jurisdiction. OIG learned that the tritium was contained within a sealed source and therefore was within the purview of the Department of Commerce (DOC). The DOC subsequently confirmed to OI that STC had not violated any DOC regulations.

(b)(7)(C) told OIG that he was following standard office practice by presenting matters that appeared to be obvious violations for OE panel review, and he believed the allegation against STC appeared to be a "clear cut" violation. (b)(7)(C) said although he knew OI has an active investigation into STC, he brought the matter to the attention of his supervisor, (b)(7)(C) with the belief it would eventually be brought before OI. (b)(7)(C) continued that his current and previous managers have condoned such procedure and that he did not know he was doing anything incorrectly. (b)(7)(C) said he believed the previous matter in which he forwarded an alleged wrongful 2005 STC export to OE was part of a large project in which he had to resolve a backlog of cases.

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(b)(7)(C) OIP, acknowledged that there is a longstanding practice in OIP to submit certain allegations that appear to be obvious violations directly to OE. However, since learning of the allegation made to the OIG, OIP is drafting allegation processing procedures for her branch. Her employees were also mandated to take the iLearn course, Allegation Receipt and Routing. She was also going to have OE provide instruction to her staff on proper procedures in handling allegations.

(b)(7)(C) OIP, stated he was not aware of the longstanding practice in (b)(7)(C) to refer allegation of obvious violations directly to OE. However, he said he is working to assure that branch employees are aware of the allegation process, and that (b)(7)(C) has spoken with (b)(7)(C) about routing allegations to OE versus the ARB [OAC].

Because no misconduct was identified, and OIP is addressing the proper handling of allegations reported to OIP, it is recommended that this case be closed to the files of this office.

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Case File 15-30

Historical File

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OIG	OIG	(b)(7)(C)	OIG	OIG	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
02/22/16	02/22/16	03/29/16	03/22/16	03/2/16	03/7/16	03/16/16

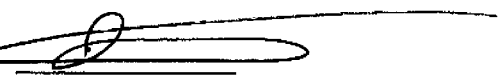
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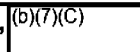
**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

May 19, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations


FROM:

(b)(7)(C)

Team Leader, (b)(7)(C)


SUBJECT:

INTRUSION ATTEMPTS INTO RESOURCES
CONNECTED TO THE NUCLEAR REGULATORY
COMMISSION PUBLIC WEB SITE (OIG CASE NO. 15-31)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated a proactive investigation based on a review of network incident reports provided by the Information Security Directorate (ISD), Office of the Chief Information Officer (OCIO), covering May 2014 – April 2015. The (b)(7)(C)  OIG, identified two incidents of network intrusion attempts into the resources connected to the NRC public facing Web site.

The first incident (NRC Incident Number: 2014-0520-001) occurred on May 20, 2014, and involved more than 3.7 million requests from a single Internet Protocol (IP) address to NRC public Agencywide Documents Access and Management System (ADAMS).

The second incident (NRC Incident Number: 2014-0603-001) occurred between May 2 – May 27, 2014, during which an unknown person attempted to compromise a database server connected to the NRC public facing Web site.

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There was no known loss of data from either intrusion attempt and there is no indication that the attacks were successful.

Potential violation relevant to this allegation is 18 USC 1030 - Fraud & Related Activity in Connection with Computers.

Findings

The (b)(7)(E) was unable to determine the identity of the individual(s) in the two intrusion attempts because the IP addresses resolved overseas.

(b)(7)(E)

Basis of Findings

In the first incident, NRC ISD reported that on May 20, 2014, there were over 3.7 million requests from a single IP address to NRC's Public facing Web site. The requests were in the form of thousands of variations of malicious requests made in a systematic manner across the public Web site. The requests appeared to utilize various types of exploits, such as password access and command execution.

In the second incident, NRC ISD reported that there were several unsuccessful access attempts directed against NRC public ADAMS from May 2 to May 27, 2014. The attempts were initially identified by the NRC Security Operations Center review of Intrusion Detection System logs. Further review of logs confirmed the intrusion attempts. Examination of the database server, event logs, and other logs confirmed that none of the attempted attacks were able to penetrate NRC public ADAMS. There is no indication of compromise.

(b)(7)(E) review of the first incident identified that the IP that made more than 3.7 million requests to the NRC public facing Web site on a single day was registered to OVH Hosting Inc., in Montreal, Canada. OIG contacted OVH Hosting Inc., which responded via email that it is renting "unmanaged" servers to its customers. This means that the company had only physical access to the server and could not access the server's content (no root, administrator, or user access). It also stated that most of its customers are resellers, renting an Internet infrastructure from the company in order to sell products to their own customers. No further information was available.

(b)(7)(E) review of the second incident identified that the IP addresses were associated with TOR projects in Germany, and China. TOR is a free software for enabling anonymous communication. TOR directs Internet traffic through a free, worldwide, volunteer network consisting of thousands of relays to conceal a user's location and usage. The ISP indicated that the IP address "operator details" showed the contact name as (b)(7)(C) from Dresden, Germany, with an email address

(b)(7)(C)

(b)(7)(E)

Because the intrusion attempts appeared to have originated overseas, further information is unavailable. Therefore, it is recommended that this case be closed to the files of the office.

Distribution:

Case File 15-031

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OIG/AIGI	(b)(7)(C)		OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)			(b)(7)(C)	J. McMillan	D. Lee	H. Bell
8/12/16	1/16	5/16/16	5/19/16	5/23/16	5/25/16	

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OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

March 30, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)
Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)
Senior Special Agent, (b)(7)(C)

SUBJECT:

POTENTIAL RETALIATION OR HOSTILE WORK
ENVIRONMENT CREATED BY SENIOR NUCLEAR
REGULATORY COMMISSION MANAGER
(CASE NO. 15-037)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an allegation from (b)(7)(C)

(b)(7)(C) that (b)(7)(C) had created a chilled work environment and fear of retaliation within (b)(7)(C). At the time of the allegation, (b)(7)(C) (b)(7)(C) (b)(7)(C).

NRC organizational changes have occurred since the allegation was made. The

(b)(7)(C) and assigned to another individual. (b)(7)(C) continued to serve as (b)(7)(C) and was appointed as (b)(7)(C) of the (b)(7)(C), until his

resignation from the NRC on March 1, 2016. (b)(7)(C) was assigned as (b)(7)(C) (b)(7)(C) until her retirement from Federal service on January 30, 2016.

The potential violation relevant to this allegation is the NRC Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace.

Findings

OIG found that there was a general perception among seven out of eight members of the (b)(7)(C) that (b)(7)(C) had a negative management style that created a chilled work environment and the potential for retaliation, but no one had personally experienced retaliation. OIG found that two out of four of (b)(7)(C) executive team members felt unsupported by (b)(7)(C). One said his staff were afraid to raise issues that (b)(7)(C) did not support and he thought (b)(7)(C) had retaliated against him personally by lowering his appraisal. The other did not think (b)(7)(C) would retaliate, but said (b)(7)(C) did not like people to disagree with him.

Basis of Findings

(b)(7)(C) told OIG that (b)(7)(C) had created a chilled working environment within the (b)(7)(C) and staff. She said (b)(7)(C) and staff were afraid to disagree with (b)(7)(C) during meetings because they were afraid of reprisal, criticism, "shooting the messenger," and other vindictive behavior. (b)(7)(C) said that (b)(7)(C) members felt that the open, collaborative work environment that NRC is so proud of had been choked out within (b)(7)(C). (b)(7)(C) said that morale was greatly impacted by the pattern of behavior and criticisms from (b)(7)(C). She said (b)(7)(C) believed this was due to a feeling of not being supported by (b)(7)(C) and that this environment, in turn, was negatively impacting morale and productivity within (b)(7)(C) and had caused disruption outside the agency as well.

(b)(7)(C) said (b)(7)(C) management decisions were being reversed on a regular basis, causing all of (b)(7)(C) to look bad, and making the (b)(7)(C) feel as though they were being set up for failure. She said (b)(7)(C) had authored a memorandum detailing two instances that they felt contributed to the current chilled work environment. One example was that they were instructed to agree with an OIG audit even though staff felt that the audit report contained inaccuracies, which later were picked up by Senate staffers. The other example was that (b)(7)(C) in an accusatory and blaming tone, berated (b)(7)(C) (b)(7)(C) in a budget meeting and called (b)(7)(C) bad managers, saying how disappointed he was with the budget recommendations, and blaming (b)(7)(C) management for the problem with the base budget. She said (b)(7)(C) was already aware of the issues from the previous year because the issues had been pointed out to him on

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multiple occasions. She relayed that this “shooting the messenger” behavior had a demoralizing effect on (b)(7)(C) staff because they had all worked hard to bring the matter of underfunding of the base budget to light.

(b)(7)(C) advised that after receiving information about her annual performance appraisal from (b)(7)(C) and an “Outstanding” Summary Rating, she was later informed by (b)(7)(C) that he (b)(7)(C) was instructed by (b)(7)(C) to drop her Summary Rating to “Excellent.” She said when (b)(7)(C) refused to do this, (b)(7)(C) had (b)(7)(C) performance appraisal lowered.

(b)(7)(C) told OIG it was his understanding that the issues that led to (b)(7)(C) memo included (1) ongoing budget discussions in which (b)(7)(C) felt (b)(7)(C) was not transparent and was blaming them for challenges that had been present for 6 or 7 years already, (2) (b)(7)(C) was not cooperative in trying to resolve the challenges and was not available to the team, and (3) discussions of strategy and budget had not been jointly agreed upon and (b)(7)(C) positions were not taking into account the discussions that had occurred within (b)(7)(C). (b)(7)(C) did not recall any budget meetings where (b)(7)(C) berated him in front of his staff or called (b)(7)(C) “stupid” or used derogatory terms, but he recalled a “very forceful, very emphatic, very abrupt ... discussion with a sense that the leadership team had not been forthcoming in providing the information that he wanted.” (b)(7)(C) said he did not take that as “berating me as an individual, but as challenging the office to do a different or a better job from what we had done.”

(b)(7)(C) said although (b)(7)(C) members had repeatedly expressed concerns to him and (b)(7)(C) about the ability to express their opinion in an open setting with (b)(7)(C) it was never expressed as a fear of retaliation. If they had used the word “retaliation” or the term “chilled environment,” he would have gone to labor relations or OCHCO to convey these concerns. He said that after the budget meeting described above, which (b)(7)(C) knew “didn’t go well,” (b)(7)(C) set up quarterly meetings with (b)(7)(C) to “reach out to the (b)(7)(C)” without (b)(7)(C) or (b)(7)(C) participating. (b)(7)(C) said he had received feedback from (b)(7)(C) that the meetings were not addressing what they wanted to address and there had been no change in the working environment between (b)(7)(C) and (b)(7)(C). However, (b)(7)(C) still did not consider this to meet his definition of a “chilled working environment,” which he characterized as one where someone honestly believes their career is in jeopardy, or that expressing their point of view will be detrimental to their career, their ongoing activities, or their performance assessment. When told by OIG that most of (b)(7)(C) members had told OIG they were afraid to express a different opinion to (b)(7)(C) for fear he would get back at them and it could affect their careers, (b)(7)(C) said he would consider that a chilled environment and that in hindsight he “may have been a bit numb to the symptoms.”

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(b)(7)(C) told OIG that (b)(7)(C) relationship with (b)(7)(C) made the office less creative, less productive, and less efficient than it could have been and that this has an impact on the agency's mission. In hindsight, (b)(7)(C) said this could be symptomatic of a chilled work environment.

(b)(7)(C) said his working relationship with (b)(7)(C) was generally cordial, but strained around budgets and strategy choices. He said he did not know whether (b)(7)(C) could be vindictive, but noted he had received a downgraded performance review the prior year following a disagreement with (b)(7)(C) concerning (b)(7)(C) appraisal of (b)(7)(C) and other staff members. He did not know, however, if his downgrade was related to that disagreement and thought (b)(7)(C) would attribute the downgrade to a professional disagreement over approach between (b)(7)(C) and (b)(7)(C) in discussing approach, was referring to what programs should be secured by (b)(7)(C).

(b)(7)(C) told OIG that she wrote the memorandum that was delivered to (b)(7)(C). At the time, she was (b)(7)(C) and was getting a lot of complaints pertaining to unfair treatment. She said staff were complaining a lot about (b)(7)(C) behavior towards (b)(7)(C) because (b)(7)(C) would openly humiliate (b)(7)(C) in front of (b)(7)(C) and badger him in meetings. She also said that following (b)(7)(C) review of an OIG audit on IT governance, they conveyed to (b)(7)(C) that they believed it was premature for OIG to draw conclusions about the effectiveness of an ongoing (b)(7)(C) that was not yet complete and that they wanted to respond to the report by saying it was too early. However, (b)(7)(C) disagreed and told them to respond and not refute the findings. She said, "We were kind of floored by that because we always thought that when you're asked to comment on an IG report, that you tell the truth of what you really think. Not just smile and say, yes sir, may I have another?" But, she said, that is what they did. She said (b)(7)(C) thought they could not trust (b)(7)(C) at all, so she felt obligated to write it all down and report it to (b)(7)(C) and (b)(7)(C) and that this lack of trust was having a negative effect on the morale of the staff, and not just (b)(7)(C). She said that she felt obligated to tell (b)(7)(C) and (b)(7)(C) that they basically needed to take some action because she felt it was negatively impacting the whole office.

(b)(7)(C) stated that one of the issues that resonates with her is a budget exercise that (b)(7)(C) division directors and (b)(7)(C) had with (b)(7)(C) regarding the (b)(7)(C) budget in which (b)(7)(C) was told by (b)(7)(C) that this cut and reinvest exercise was not a valid exercise because you cannot cut anything if he (b)(7)(C) has historically been underfunding his base costs for (b)(7)(C) for years. She stated that (b)(7)(C) reaction was to call them stupid and to inform them that they are all bad managers and did not know about managing money.

OIG questioned (b)(7)(C) and seven other members of (b)(7)(C) regarding their interactions with (b)(7)(C). Although none of the eight (b)(7)(C) members reported personally experiencing retaliation by (b)(7)(C), seven reported significant concerns about (b)(7)(C) leadership, with five specifically describing a chilled work environment and five reporting fear of retaliation by (b)(7)(C) if they disagreed with him. These seven (b)(7)(C) members also (b)(7)(C) described (b)(7)(C) in such ways as unsupportive of (b)(7)(C), mistrusted by (b)(7)(C), not open to differing opinions, and a poor leader. The (b)(7)(C) member interviewed characterized the situation as a "degree of frustration in (b)(7)(C).

Interviews of Other (b)(7)(C)

OIG also interviewed the three other (b)(7)(C) (in addition to (b)(7)(C)) that composed (b)(7)(C) about their interactions with (b)(7)(C). Two of the three (b)(7)(C) and (b)(7)(C) said that (b)(7)(C) did not support them; the third (b)(7)(C) said she felt supported by (b)(7)(C) but was aware of the tension between (b)(7)(C) and (b)(7)(C).

(b)(7)(C) told OIG that when he has challenges, the direction he gets from (b)(7)(C) is work it out. (b)(7)(C) did not think that (b)(7)(C) supported (b)(7)(C) the way it needed to be supported. He said there is a natural conflict between (b)(7)(C) and which should take precedence. He said that some of his staff were nervous and scared to raise issues that (b)(7)(C) did not support because of his position and a fear that it could have a detrimental effect on their careers. (b)(7)(C) said he personally was concerned about (b)(7)(C) retaliating against him and he thought he saw this in his appraisal. He said that the consensus among his (b)(7)(C) and his (b)(7)(C) was that they got limited support from (b)(7)(C) and it was only when the support for an issue came from above (b)(7)(C) that CSO received support. (b)(7)(C) said that (b)(7)(C) seemed to side all the time with the other (b)(7)(C).

(b)(7)(C) told OIG that she did not think anybody liked working for (b)(7)(C). She stated that he did not support (b)(7)(C) management and they were all aware of this. She said when (b)(7)(C) management brought issues to him, he would flip-flop. If another office pushed back, especially the program offices or any of the (b)(7)(C), he would not support (b)(7)(C) staff so (b)(7)(C) would work around him the best that they could. She did not think that (b)(7)(C) would retaliate if (b)(7)(C) management told (b)(7)(C) that they did not feel supported by him, but said (b)(7)(C) could be very moody. She said (b)(7)(C) did not like to hear that you disagreed with him and when you did, he stopped talking to you and turned his back on you. She advised that (b)(7)(C) lack of support impacted (b)(7)(C) in the way it conducted its business. She stated that it took more energy to work the system insofar as working around (b)(7)(C) and working directly with the other (b)(7)(C) and office directors to accomplish their mission.

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(b)(7)(C) told OIG that she felt she received support from (b)(7)(C). She said she understood the tensions and dynamics between (b)(7)(C) and (b)(7)(C) over the past couple of years. She said that the staff did not feel there was a collaborative, good working environment. (b)(7)(C) said that over the past year, there had been tension between (b)(7)(C) and (b)(7)(C) regarding their vision as to what direction or path (b)(7)(C) should take. She also said there had been tension between the two concerning how (b)(7)(C) had rated his direct reports. She said that if it had come to her attention that staff in (b)(7)(C) were afraid of expressing their views, which might be in contradiction to (b)(7)(C) views because of a fear of retaliation, that she would certainly have had her staff conduct an inquiry.

Interview of (b)(7)(C)

(b)(7)(C) told OIG that (b)(7)(C) came to see him in January or February 2015 to convey her views about (b)(7)(C) and (b)(7)(C). (b)(7)(C) said he was surprised at how upset and angry she was about what she claimed (b)(7)(C) was doing. (b)(7)(C) said (b)(7)(C) was not giving the right type of direction to his direct reports, she did not understand his decisionmaking, he was providing an unhealthy environment, that people felt second guessed and that some of his decisions did not reflect careful thought, and he did not have the agency's best interests in mind. She was also very critical of (b)(7)(C) and said that she was the one holding the office together. (b)(7)(C) said (b)(7)(C) also conveyed unhappiness about her performance appraisal, which had been lowered that year by the Performance Review Board (PRB) based on (b)(7)(C) performance, although (b)(7)(C) was not sure whether she conveyed that during this meeting or a separate one.

After the conversation with (b)(7)(C), (b)(7)(C) said he looked more carefully at (b)(7)(C) and (b)(7)(C) relationship with his direct reports. He sat down with him "at midyear for example" and asked what (b)(7)(C) was doing about his low performing organizations. He recalled (b)(7)(C) assessment was that (b)(7)(C) was a somewhat ineffective (b)(7)(C) and that (b)(7)(C) did not work together well. (b)(7)(C) said after the midyear, he remained frustrated that (b)(7)(C) was not making much progress healing the "fight between (b)(7)(C) and (b)(7)(C) and that the two (b)(7)(C) ((b)(7)(C) and (b)(7)(C)) did not get along with each other. (b)(7)(C) said the fact that they could not cooperate and coordinate together impacted the performance of their organizations and was one of the reasons both were scored down by the PRB. (b)(7)(C) talked with (b)(7)(C) again at various times after the midterm to gauge how things were going between him and the managers. He said (b)(7)(C) response was mixed and he told (b)(7)(C) he had been trying to get (b)(7)(C) to take responsibility and accountability for how (b)(7)(C) was performing. (b)(7)(C) thought (b)(7)(C) should have gotten a different (b)(7)(C) but (b)(7)(C) reported they were making some progress. (b)(7)(C) said that things in (b)(7)(C) were better than they were a year ago, although the progress was not "lightning speed."

(b)(7)(C) said (b)(7)(C) had not communicated with him lately about his relationship with (b)(7)(C) but that about a year before he had “one viral moment” with (b)(7)(C) when (b)(7)(C) told him he was going to meet with (b)(7)(C) one on one to see if he could help things out. (b)(7)(C) said he told (b)(7)(C) “No, you’re not. You’re not going to meet with the (b)(7)(C). You’re going to meet with your (b)(7)(C) and light a fire under him so that he can fix this problem.... Not you. You need to fix him.”

Review of (b)(7)(C) SES Appraisals

According to NRC Yellow Announcement (b)(7)(C) the PRB makes recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level System employees. Twelve Senior Executives served on the PRB in (b)(7)(C) including (b)(7)(C) and (b)(7)(C) served as Co-Chairs of the PRB.

OIG reviewed the 2014 summary ratings for (b)(7)(C) and (b)(7)(C) and found that (b)(7)(C) and (b)(7)(C) summary ratings were lowered by the PRB. Though (b)(7)(C) and (b)(7)(C) summary ratings remained the same, their scores were dropped by the PRB. OIG found that a total of six SES managers had their appraisals lowered (i.e., their scores were lowered, which may or may not have affected their summary rating) by the PRB. The PRB recommended a “Fully Successful” summary rating for both (b)(7)(C) and (b)(7)(C).

Interview of (b)(7)(C)

With regard to (b)(7)(C) performance appraisal, (b)(7)(C) told OIG the agency follows a process to make a determination about performance appraisals, and it is led by the EDO and the General Counsel, in terms of review of all the executives’ SES performance plans and appraisals. He said he rated (b)(7)(C) based on his performance. He said (b)(7)(C) gave (b)(7)(C) a rating that he (b)(7)(C) felt was appropriate for (b)(7)(C) and that that was (b)(7)(C) decision. He (b)(7)(C) signed it, submitted it, and it was approved. (b)(7)(C) relayed that (b)(7)(C) appraisal was reviewed and discussed at length, ad nauseam, by the PRB, along with others within (b)(7)(C), as well as others within (b)(7)(C). The performance appraisal was also independently reviewed by (b)(7)(C) a PRB member.

(b)(7)(C) said the PRB was concerned about the difference in his rating of (b)(7)(C) and (b)(7)(C) rating of his subordinates. The PRB discussed it and ultimately made a decision to lower some ratings. He said that that was a PRB decision, and not his alone.

He said he did not instruct (b)(7)(C) to lower (b)(7)(C) appraisal, but gave him feedback in terms of what he believed to be (b)(7)(C) performance. In the end, as he did with all of his other subordinates, he did not direct (b)(7)(C) to lower it, nor did he tell (b)(7)(C) what specific rating he should give (b)(7)(C).

(b)(7)(C) said it was at least 2 years ago that (b)(7)(C) and (b)(7)(C) expressed concern to him about the perception by (b)(7)(C), in this case the (b)(7)(C) about how things were going in terms of his view of their performance, activities, interactions with (b)(7)(C) and particularly interactions within the organization. Based on this feedback, one action he took was to set up a recurring meeting at their request to meet at least quarterly with (b)(7)(C) to listen to them. The purpose was to create and endorse effectively an open door environment where (b)(7)(C) had the opportunity on a recurring basis to share feedback, share concerns, and hear from him, and for him, most importantly, to hear from them. (b)(7)(C) said this has occurred.

(b)(7)(C) did not recall (b)(7)(C) or (b)(7)(C) ever saying that the working relationship between him and (b)(7)(C) was a chilled work environment. His interpretation was that it was strained.

(b)(7)(C) said it was amazing to him to hear there was a perception among the (b)(7)(C) that they received no support from him. He advised that he has supported them in terms of budget issues, major initiatives, and career growth. He further advised that as (b)(7)(C) he was ultimately responsible for making the right decisions and the right investments for the agency and there were going to be times that staff may not agree with his decisions.

According to (b)(7)(C) in the end, senior managers have to make choices in terms of how and where they ultimately use their scarce resources and somebody is not going to be happy. He has to be able to hear their feedback, their basis, and their justification. He said where he struggled regularly was the leadership staff's ability to clearly articulate the basis for why an investment needed to be made, the budget, and the budget impact.

(b)(7)(C) said that on a regular basis, (b)(7)(C) consistently struggled in terms of clearly explaining why certain investments were important.

(b)(7)(C) said that he would define a chilled work environment as an absolute fear of being able to speak up. When asked, "If the leadership team feared speaking up, would you say that was a chilled work environment?" (b)(7)(C) responded, "I would say it was a strained work environment. I won't use a chilled work environment." When (b)(7)(C) was informed that he just identified a chilled work environment as an absolute fear of being able to speak up, he responded by stating, "I think it's strained because it wasn't -- going back to the things I said earlier. There are individuals within the organization that felt very comfortable to speak up so I'm not making an absolute statement."

(b)(7)(C) stated that since (b)(7)(C) he had been working with an outside consultant in improving the trust between the leadership and executive teams and himself. He stated that he was happy with the results of the offsite team building they held and that the response from the leadership team was that it was a great start.

Conclusion

Because OIG did not identify any retaliation by (b)(7)(C) and he is no longer an NRC employee, it is recommended that this case be closed to the files of this office.

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Case File 15-037

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OIG	OIG	(b)(7)(C)	OIG	OIG (b)(7)(C)	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
03/21/16	03/24/16	03/30/16	03/30/16	03/30/16	4.16 03/16	4 03/4/16

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OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

June 29, 2016

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Senior Special Agent, (b)(7)(C)

SUBJECT:

CONCERNS PERTAINING TO U.S. NUCLEAR
REGULATORY COMMISSION COMPUTER SECURITY
OFFICE AND THE FEDERAL INFORMATION SECURITY
MODERNIZATION ACT OF 2014 AUDIT (OIG CASE NO.
15-040)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was based on an allegation from a confidential informant (CI) that an OIG audit contractor employee (b)(7)(C) whom the CI believes has been performing the Federal Information Security Modernization Act (FISMA) of 2014 audit for years, simply "checks the box" when conducting her audit.

Potential violations relevant to this allegation are 18 USC 287 - False - Fictitious or Fraudulent Claims, and 41 USC 604 - Fraudulent Claims.

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Findings

OIG found that the FISMA audit conducted by Carson, Inc., was conducted as directed by the Statement of Work. OIG also learned that the scope of work is determined by the U.S. Office of Management and Budget (OMB) and not by OIG.

Basis for Findings

On December 17, 2002, the President signed into law the E-Government Act, which includes Title III, FISMA. FISMA requires (1) annual agency program reviews, (2) annual Inspector General (IG) evaluations, (3) agency reporting to OMB the results of IG evaluations for unclassified systems, and (4) an annual OMB report to Congress summarizing the material received from agencies.

OIG reviewed the Statement of Work for NRC Contract 13-233-SOL, which requires the contractor to

“conduct an independent evaluation for OIG of NRC's computer security program, policies, and practices. This audit shall fulfill FISMA requirements and the contractor shall utilize current FISMA guidance, including that found at <http://www.whitehouse.gov/omb/>.... The contractor shall respond to all OMB instructions as reflected at <http://www.whitehouse.gov/omb/>. This includes answering the template provided by OMB for all OIG's to respond to.... After issuance of the final report...., the contractor project manager or designated supervisor will review evaluation work papers prepared by contractor employees.... Based on this review, the project manager or designee will issue a letter to OIG conveying an assessment of the adequacy of the work papers.”

The CI told OIG that while in conversation with (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

Office of Chief Information Officer, about the challenges with the information technology infrastructure, they discussed the FISMA audit. The CI asked

(b)(7)(C)

“If the system is not ready for prime time and the Inspector General is auditing the system, won't they [OIG] find these challenges?” The CI said (b)(7)(C)

(b)(7)(C)

response was, “The contractor that they have hired wouldn't be able to find them, anyway. All they are doing is checking boxes and checking paperwork....

Because all she is doing is checking the boxes to make sure certain paperwork is done. She is not really, to me, looking at holistically what should be done....”

(b)(7)(C) told OIG that she is responsible for the cyber security policy for the agency, compliance with FISMA and agency standards and regulations, training, and guides that they produce. She did not remember exactly which systems were selected by the auditor to review for the FISMA audit, but thought ADAMS was one. She said that the audit team asked for information about all of NRC systems with respect to NRC's compliance with FISMA, and her office provides it. She said her interaction with the auditor was primarily through email. She said the auditor would send a request for information and her team would set up a SharePoint site where they deposited the information so that the auditor could have access.

It was (b)(7)(C) understanding that OMB instructs auditors on how to conduct the FISMA audit, instructing them what exactly to ask for and what to look for. She said she had no idea what their target sets were. However, the auditor selects systems to review based on their previous review of that system and any new information, which would cause them to review the system again. She said the questions asked by the auditor are not any different than they have been in the previous years, and that this is not a concern to her because the audit is directed by OMB and Congress. In her opinion, the audit has very little value, and does not identify the "underlying issues." [Investigative Note: OIG requested (b)(7)(C) provide OIG information on her specific concerns that are not captured by the FISMA audit, and she never provided the information to the OIG.]

(b)(7)(C) serves as the (b)(7)(C) for the contract. She told OIG that the FISMA evaluation is an annual OMB requirement, and OIG Audits contracts with Carson, Inc., to conduct this annual evaluation. (b)(7)(C) said OIG Audits has used Carson since 2002 and that the contract is a 1-year base contract with four 1-year options. (b)(7)(C) relayed that 90 percent of the audit is conducted by (b)(7)(C)

(b)(7)(C) who holds the following certifications: Certified Authorization Professional; Qualified Security Assessor; Approved Scanning Vendor; a SANS GIAC ISQ-2700 certification; and a Certified Information Systems Security Professional certification.

(b)(7)(C) said that the requirements for the evaluation are set by OMB, which provides questions to ask during the audit and documentation to be gathered from NRC's Computer Security Office. She said this is the extent of the scope of work to be delivered by Carson and that Carson follows the statement of work and has no reason to look into items not covered in the statement of work.

(b)(7)(C) advised that the evaluation commences in June and a report is due by mid-November. (b)(7)(C) stated that (b)(7)(C) Carson, does the verification and quality assurance for the contract report. She said the verification is not

done until after the report is submitted to the Department of Homeland Security and becomes public.

(b)(7)(C) indicated that the 2014 FISMA audit report was never verified by (b)(7)(C) because she (b)(7)(C) forgot to ensure it was done. However, in October 2015, she received the 2014 FISMA audit verification from (b)(7)(C) also stated she goes to Carson's office to verify the work papers produced under the contract. She stated that she has reviewed and verified the Monthly Status Reports and costs that have been submitted by Carson pertaining to the FISMA audit and is in agreement with the costs.

(b)(7)(C) stated that she reviews the workpapers that the contractor prepares to see if it appears the work was captured accurately and was necessary to support the findings in the report. She stated the contractor uses the same elements of a finding as OIG Audits uses so it is pretty easy to see if their workpapers makes sense. She said she does this to make sure OIG Audits is paying for what is needed and that the bills or hours are not inflated. She further stated that she is courtesy copied on every email, so she knows what is going on with the contract.

With regard to the hours billed, (b)(7)(C) stated she looks at the monthly statements to see how many hours were billed for each task. In the statement of work, the contractor estimated the hours needed for each task and (b)(7)(C) looks to see if the hours are reasonable each month for what was identified as being worked on for the monthly status report.

(b)(7)(C) stated that she has had the same contractor for 12 years on the same subject; therefore, she is extremely familiar with what work papers are created and the number of hours billed for each task.

[Investigative Note: Since the initiation of this investigation (b)(7)(C) relinquished her duties of (b)(7)(C) for this contract and has assigned such duties to another member of her team.]

Because, OIG did not identify any evidence to suggest any violation of 18 USC 287 - False - Fictitious or Fraudulent Claims or/and 41 USC 604 - Fraudulent Claims by the audit contractor, Carson, Inc., it is recommended that this case be closed to files of this office.

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Case File 15-040

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OIG (b)(7)(C)	OIG	(b)(7)(C)		OIG	OIG (b)(7)(C) J. McMillan	OIG D. Lee	OIG H. Bell
06/20 /16	06/23 /16	06/28 /16	06/28 /16	06/29 /16	06/28 /16	06/29 /16	06/29 /16

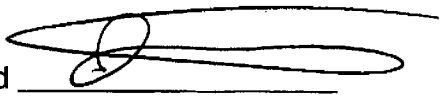
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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

September 30, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

FROM:

(b)(7)(C)
Team Leader, (b)(7)(C)

SUBJECT:

FAILURE TO PERFORM U.S. NUCLEAR REGULATORY
COMMISSION INSPECTION REQUIREMENTS BY
REGION II (OIG CASE NO. 15-41)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted this investigation based on an anonymous allegation that NRC Region II inspectors failed to perform an adequate inspection of 71111.20 requirements, "Refueling and Other Outage Activities," at the (b)(7)(C) ((b)(7)(C))). According to the allegor, a Region II (b)(7)(C) allowed NRC inspectors to close out a portion of an inspection pertaining to the containment area using a camera that had a limited view of the area. The allegor questioned the quality of inspection oversight and maintained that NRC Region II allowed this to happen.

OIG learned that the (b)(7)(C) conducted the relevant portion of the inspection with the use of a camera in the containment area. Additionally, during the investigation, OIG learned that the (b)(7)(C) intentionally did not declare her pregnancy to the licensee so that the licensee could not prevent her from entering the containment area.

Potential violation relevant to this investigation is 5 CFR 2635, Standards of Conduct.

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Findings

OIG found the (b)(7)(C) partial walk-down of (b)(7)(C) containment area, combined with her video camera review of high radiation areas in containment she could not physically access due to her pregnancy, did not violate NRC inspection requirements. According to an Office of Nuclear Reactor Regulation (NRR) reactor operations engineer who is the lead for NRC Inspection Procedure (IP) 71111.20, the intent of IP 71111.20 (thorough inspection and walk-down of containment) was met when (b)(7)(C) (b)(7)(C) conducted a partial walk-down of containment while relying on a video of the other levels that she should not physically view due to her pregnancy. (b)(7)(C) (b)(7)(C) said he agreed with the use of a video camera under the circumstances (b)(7)(C) used it for at (b)(7)(C).

According to the (b)(7)(C) the licensee was not happy with her entering containment while pregnant; however, because she had not declared the pregnancy, they could not prevent her from entering containment. OIG confirmed that the (b)(7)(C) was not required to declare her pregnancy to the licensee, according to the relevant licensee procedure for declared pregnant workers.

While OIG did not find any evidence of misconduct by RII staff, OIG discussed with then-(b)(7)(C) the possible licensee concern due to an NRC employee entering the containment area while pregnant.

OIG also briefed the investigation to the Office of the General Counsel (OGC) who researched, at OIG's request, applicable regulations and the adequacy of the inspection. OGC determined that (b)(7)(C) did not violate NRC regulations by not declaring her pregnancy. OGC also determined that (b)(7)(C) inspection appeared to meet the intent of IP 71111.20.

Basis for Findings

OIG learned from Region II's SharePoint Site that (b)(7)(C) Unit 2 was scheduled to be in a planned outage, number (b)(7)(C), from approximately February 14, 2015 - March 21, 2015. The outage ran longer as described in the NRC Integrated Inspection Report, which stated that Unit 2 was still in refueling outage (b)(7)(C) as of April 1, 2015. Also contained on this SharePoint site was information stating that a temporary containment opening was being created at (b)(7)(C) for the following reasons: Containment Atmosphere Control Outage, Reactor Building Outage, and the Conventional Service Water Inspection.

From review of Inspection Procedure 71111.20, OIG learned that this inspection is performed during outages. All inspection sections are to be conducted for refueling

outages, if possible. There are two sections within the procedure that describe tasks related to containment:

Section 02.07 Monitoring of Heat-up and Startup Activities. If containment was opened, the inspector shall conduct a thorough inspection and walk-down of containment prior to reactor startup. Particular attention should be given to areas where work was completed to verify no evidence of leakage, and to verify that debris has not been left which could affect performance of the containment sumps.

Section 03.07 Monitoring of Restart Activities. This activity should focus on the licensee having the required equipment available for mode changes to ensure that risk is kept to a minimum. The activity can be conducted by direct observation of system/equipment operation, documentation reviews, or a combination of both. The sampling should be adequate to provide reasonable verification that the licensee is following the administrative program laid out to ensure that risk is maintained at a minimum level. Prior to containment closure, a thorough walk-down of containment shall verify there is no evidence of leakage, tags are cleared, there is no obvious damage to passive systems, and there is no containment sump damage or debris....

On July 31, 2015, NRC published the (b)(7)(C) Integrated Inspection Report. The report states that during the refueling outage, the inspectors monitored licensee controls over the activity of "Walk-down of the drywell (primary containment) to verify that debris had not been left which could block emergency core cooling system suction strainers."

This integrated inspection report identifies four NRC inspectors who participated in the various inspections during the timeframe of April 1, 2015, through June 30, 2015, at

(b)(7)(C)

(b)(7)(C)

and two acting (b)(7)(C)

OIG learned from (b)(7)(C) that (b)(7)(C) was the only resident onsite on April 4, 2015, when Brunswick was restarted.

(b)(7)(C) told OIG that (b)(7)(C) was supposed to do the walk-down of Unit 2's containment but due to scheduling conflicts (b)(7)(C) had, she (b)(7)(C) did a partial walk-down of Unit 2 because of her pregnancy. She said she discussed this issue with her branch chief, (b)(7)(C), prior to her entering containment and that (b)(7)(C) had agreed to let her conduct a partial walk-down of Unit 2 as long as they met the intent of the inspection procedure.

She said that one of the other (b)(7)(C) from the same (b)(7)(C) (b)(7)(C), volunteered to conduct the walk-down, but that (b)(7)(C) decided it was not necessary since there was no guarantee that the containment would be ready for inspection when (b)(7)(C) arrived on site. She said the schedule to enter containment is very fluid since they have to wait for all the workers to finish their work and take down the scaffolding and clean containment of all debris.

(b)(7)(C) stated that she was 6 months pregnant (at the time) and it would not have been safe to climb up and down the ladders to reach the other levels in containment. Also, the Unit 2 containment was considered a very high radiation area and contaminated area, and she needed to limit the radiation dose to the fetus. Finally, the containment area is very hot during that stage in the outage, which limits the amount of time NRC and plant staff are allowed to stay in there. She stated that (b)(7)(C) (b)(7)(C), offered to have licensee staff enter containment using a Go Pro camera to capture the levels that she was unable to reach due to her pregnancy. She stated that she was given a copy of the video of the containment that was captured by the Go Pro camera so that she could verify that the containment was ready for startup. She stated she reviewed the videos before the unit was restarted and identified no issues.

She stated that she inspected the containment from the 20-foot level, which contained a minimal amount of radiation and that she was accompanied by the (b)(7)(C) shift manager, (b)(7)(C). She stated that she was in the containment approximately 30 minutes and received about 5mrem of radiation. (b)(7)(C) also relayed that the licensee was not happy with the fact she was entering containment while pregnant. However, (b)(7)(C) said because she did not declare her pregnancy they could not prevent her from entering.

(b)(7)(C) told OIG that he clearly recalled a conversation with (b)(7)(C) prior to her entering containment (drywell) about having the shift supervisor do the walk-down for her with glasses that contain a recording camera, so that she would not have to enter the drywell since she was pregnant. He stated that she would be able to view the video after the (b)(7)(C) exited the drywell. (b)(7)(C) stated that (b)(7)(C) insisted on doing the walk-down herself because there were spots in the drywell that were too dark for the video to capture.

(b)(7)(C) told OIG he was present when (b)(7)(C) conducted her walk-down of Unit 2 during the outage. He stated that he accompanied (b)(7)(C) to the 17-foot level of the containment, where she pointed things out to him that needed to be corrected before restart. He said they were accompanied by a (b)(7)(C) health physicist because there was a concern about (b)(7)(C) pregnancy. He was not sure, but thought the walk-down lasted less than an hour.

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(b)(7)(C) Division of Reactor Projects, RII, told OIG he was satisfied with the walk-down of (b)(7)(C) Unit 2 containment conducted by (b)(7)(C). He was aware that a portion of the walk-down was completed using video, and he believed it met the intent of IP 71111.20. He said there was nothing in the IP that prohibited the use of video when conducting a thorough walk-down, and that the IP was silent on the matter of using video. According to (b)(7)(C) while (b)(7)(C) had to perform a walk-down in areas that were not high radiation levels, she could use a camera in the high radiation areas because of her pregnancy.

(b)(7)(C) said that (b)(7)(C) told him that she received a complaint from the licensee because she went into the (drywell) containment area and did not declare her pregnancy. According to (b)(7)(C) the licensee may have made the allegation about the containment walk-down as retribution because (b)(7)(C) tended to ask questions and raise a lot of issues during her inspections.

(b)(7)(C)
(b)(7)(C) NRR, told OIG that he was the lead for IP 71111.20, and based on the facts as relayed to him, the intent of IP 71111.20 was met when (b)(7)(C) conducted a partial walk-down of (b)(7)(C) Unit 2 containment while relying on video of the other levels that she could not physically view due to her pregnancy. (b)(7)(C) had not heard of anyone using video to conduct a partial walk-down but said that under these circumstances it would be acceptable to use this proxy to conduct part of the walk-down as long as the quality of the video was acceptable for the purpose. He would have preferred if (b)(7)(C) had viewed the other containment levels via live feed versus viewing video recordings after the fact; however, he said as long as (b)(7)(C) viewed (via video) those areas that she would have viewed if she had been physically present, then he is satisfied that the intent of IP 71111.20 was met. He said that it was not unusual to use cameras in high radiation or hazardous areas to conduct inspections.

(b)(7)(C) stated that 10 CFR Part 20 does not speak to whether or not a pregnant employee can enter containment, but rather the (regulation addresses the) amount of dosage a fetus can be exposed to. Furthermore, he stated that he does not believe that a supervisor can order an undeclared pregnant subordinate not to enter containment without raising other legal issues. He stated that based on the facts presented to him, he is satisfied that the intent of IP 71111.20 was met in this case.

(b)(7)(C) NRR told OIG that he is not a subject matter expert on 71111.20 but agrees with (b)(7)(C) that the intent of IP 71111.20 was satisfied when the (b)(7)(C) reviewed video to complete her walk down of the drywell due to her pregnancy. (b)(7)(C) said that as long as the video showed those sections of the drywell that the (b)(7)(C) would have sampled during her inspection if she had

physically been able to so, then as far as he was concerned the intent of the IP was satisfied.

In addition, regarding (b)(7)(C) view that a licensee could not prevent her from entering containment while pregnant because she did not declare her pregnancy, OIG reviewed Duke Energy's (b)(7)(C) licensee holder) procedures for pregnant workers. According to Duke Energy Procedure TE-RP-ALL-4001, Declared Pregnant Worker, it defines "Declared Pregnant Worker," as defined in 10 CFR 20.10003 as "...a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception." (b)(7)(C) (b)(7)(C) advised OIG that there is "no limitation within the procedure as to who may or may not declare and the procedure does not mention NRC personnel."

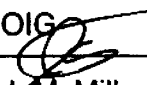



OIG briefed OGC on the results of this investigation and asked for its review to determine if (b)(7)(C) violated any NRC regulations by not declaring her pregnancy while visibly pregnant, the adequacy of the inspection completed by (b)(7)(C) NRC's management's duty to keep NRC employees safe, and possible future liability if (b)(7)(C) child suffered some harm from radiation exposure in utero. OGC determined that based on the facts presented, (b)(7)(C) did not violate NRC regulations by not declaring her pregnancy or conducting the inspection, which appears to have met the intent of a "thorough walkdown" in IP 71111.20. OGC also determined that (b)(7)(C) NRC manager acted consistently with NRC regulations and guidance. Finally, OGC determined that NRC's risk of liability for potential fetal injury is minimized by the NRC manager and (b)(7)(C) actions in this case and existing regulations and procedures. Attached to this closing memorandum is OGC's memorandum of its analysis.

OIG advised the then (b)(7)(C) of the outcome of this investigation. Because there is no evidence of misconduct by (b)(7)(C) for failing to conduct an adequate inspection, it is recommended that this case be closed to the files of this office.

Distribution:

Case File 15-041

Magnum

OIG (b)(7)(C)	(b)(7)(C)	OIG (b)(7)(C)	OIG 	OIG 	OIG
(b)(7)(C)		(b)(7)(C)	J. McMillan	D. Lee	H. Bell 
09/30/16	1 / 16	9/30/16 	9/30/16	9/30/16	9/30/16

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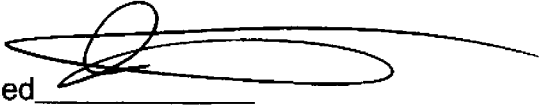


OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

August 3, 2016

MEMORANDUM TO:


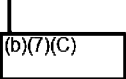
Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)


Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Fca (b)(7)(C)
Special Agent, (b)(7)(C)


SUBJECT:

POTENTIAL MISUSE OF GOVERNMENT POSITION BY
NUCLEAR SECURITY AND INCIDENT RESPONSE STAFF
(OIG CASE NO. 16-004)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation in response to an allegation that on October 22, 2015, Robert BUNCH, Intelligence Analyst, Intelligence Liaison and Threat Assessment Branch (ILTAB), Division of Security Operations (DSO), Office of Nuclear Security and Incident Response (NSIR), left his business card for Two Arrows Consulting, Inc., in a Commissioner's office. According to the allegor, Two Arrows Consulting, Inc., provided intelligence services in Human Intelligence, Counterintelligence (CI), and Imagery Intelligence. In particular, Two Arrows Consulting, Inc., provided Critical Infrastructure Analysis, Subject Matter Expertise in Chemical/Nuclear Sectors, and Support to Domestic Nuclear Detection/Office on Trafficking of Nuclear Material and this presented potential misuse of Government position and potential conflict of interest.

Potential violations relevant to this allegation include the following: NRC Management Directive (MD) 7.8, "Outside Employment"; NRC MD 7.9, "Ethics Approvals and Waivers"; NRC MD 2.7, "Personal Use of Information Technology"; 5 CFR 2635.702,

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“Use of Public Office for Private Gain”; 5 CFR 2635.703, “Use of Nonpublic Information”; and 5 CFR 2635.502, “Personal and Business Relationships.”

Findings

OIG found evidence of BUNCH conducting business related to Two Arrows Consulting on his Government issued computer. OIG found evidence that Two Arrows Consulting listed NRC as a satisfied client on a document. OIG found evidence that BUNCH was in possession of non-public information, but found no evidence of inappropriate use of that information. OIG found no evidence that BUNCH provided Two Arrows with or that Two Arrows Consulting used any classified information gained from BUNCH's position with the NRC. Further attempts to investigate wrongdoing by BUNCH were halted because BUNCH committed suicide in March 2016.

Basis for Findings

Interview of (b)(7)(C)

(b)(7)(C) NSIR, told OIG that she was contacted by (b)(7)(C) Commissioner OSTENDORFF, regarding a Two Arrows Consulting, Inc., business card that BUNCH left in the Commissioner's office. (b)(7)(C) said that she went to the business Web site and Twitter page to understand how the business potentially was involved with the Intelligence Community (IC). (b)(7)(C) asked BUNCH about leaving the business card in the Commissioner's office and he explained that it was unintentional and must have fallen out of his suit pocket. She asked him if he did any work with the IC and he said he just took care of the business aspect of the company.

(b)(7)(C) told OIG that after she spoke with BUNCH, she rechecked the Two Arrows Web site and it had been changed. She said that what she had presumed to be BUNCH's initials had been removed and the client list had changed. (b)(7)(C) said references to Department of Homeland Security (DHS), including the Domestic Nuclear Detection Office and Office of Intelligence and Analysis, and “subject matter expertise in chemical/nuclear sectors” had also been removed. (b)(7)(C) said that at NRC, BUNCH worked with the chemical/nuclear sector of critical infrastructure analysis and was reviewing a document for the Domestic Nuclear Detection Office. (b)(7)(C) told OIG that almost all clients listed on the Two Arrows Web site before it changed were agencies her office worked with regularly. She visited BUNCH's LinkedIn page and found he was registered as the Vice President and identified as a “businessman” with Two Arrows Consulting.

[Investigative Note: After interviewing (b)(7)(C) OIG attempted to visit BUNCH's LinkedIn page, to confirm what (b)(7)(C) told OIG, but could not gain access to the page.]

Review of Emails Forwarded From (b)(7)(C)

OIG reviewed four emails forwarded from (b)(7)(C) containing information regarding BUNCH's private business activities and NRC's Office of the General Counsel (OGC) guidance on the issue. In one email (b)(7)(C) asked BUNCH, during the morning of October 28, 2015, if he contacted OGC (b)(7)(C) about the business. BUNCH said that Two Arrows Consulting did not have clients that met the criteria, per MD 7.8, of entities regulated by the Commission and therefore he did not require approval from OGC. She also asked him if the business related to anything he did at NRC and if he did any work with the IC. (b)(7)(C) said it was a business consulting firm and that he just handled the administrative side of the business and did not participate in any work with the IC.

In another email, (b)(7)(C) sent OIG a PowerPoint that consisted of screenshots of the Two Arrows Consulting Web site that she copied prior to it being changed on October 28, 2015, after her conversation with BUNCH. (b)(7)(C) provided another email regarding contact between (b)(7)(C) and (b)(7)(C), OGC. (b)(7)(C) informed her that some of the ethics restrictions governing employee outside activity or interactions with persons outside the agency did not apply if the "outsider" was another Federal Government entity. He said what is never okay is when a Government employee uses their official position in a way that results in a private benefit for themselves, so OGC always advises employees who do outside work for companies with Federal clients to consult with OGC.

Review of Business Card Left in Commissioner's Office

OIG reviewed the business card left in Commissioner Ostendorff's office. One side contained the words (b)(7)(C), describing it as agile, relevant, and engaged. The other side of the card contained the name Rob BUNCH and described him as "businessman and EVP." It also contained phone number 703.999.9787; email address rob.bunch@two-arrows.com; Web site address www.two-arrows.com; and names of three States, New York, Virginia, and Florida.

Review of www.two-arrows.com

On October 27, 2015, OIG reviewed Web address www.two-arrows.com, which is the Web site for Two Arrows Consulting, Inc. The Web site had several tabs to select: Home, Story, Solutions, Clients, Contact, and Careers. At the bottom of the Story tab were the initials (b)(7)(C) R.B., and (b)(7)(C). After the initials R.B. were the descriptive terms businessman, vision and design, marketing, corporate governance, and simplifier. The solutions page contained a list of services provided to include critical infrastructure analysis, subject matter expertise in chemical/nuclear sectors, and support to Domestic Nuclear Detection Office on trafficking of nuclear material. The Clients page listed Defense Intelligence Agency, Federal Bureau of Investigations, and DHS to include the

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Office of Intelligence and Analysis, Office of Infrastructure Protection, and Domestic Nuclear Detection Office.

On October 29, 2015, after concerns from (b)(7)(C) were raised about changes to www.two-arrows.com, OIG revisited the Web address to confirm or refute changes. During the review, it was noted that the initials R.B. had been removed and the client list had changed. The DHS, the Domestic Nuclear Detection Office, and Office of Intelligence and Analysis, and the phrase, "subject matter expertise in chemical/nuclear sectors," had all been removed.

(b)(7)(E) Records Check

OIG conducted an (b)(7)(E) records check on BUNCH. The check revealed BUNCH was the Vice President, (b)(7)(C) was the (b)(7)(C) and (b)(7)(C) was the (b)(7)(C) of Two Arrows Consulting, Inc., a management consulting company that started in 2012.

Computer Forensic Analysis of BUNCH's NRC Computer

OIG's (b)(7)(E) conducted forensic imaging and analysis of BUNCH's NRC computer. The digital analysis of the (b)(7)(C) of user profile RXB6 (BUNCH) identified evidence the user was using his NRC issued Government computer to conduct business related to Two Arrows Consulting. OIG (b)(7)(E) found approximately 43 documents and more than 200 emails as a result of search term Two Arrows Consulting. A search of the Uniform Resource Locator Web site addresses revealed BUNCH visited www.two-arrows.com on multiple occasions.

One of the 43 documents found contained the header, "TWO ARROWS CONSULTING INC. 2013." The document was saved as "TAC Outreach 2013 SOCOM SBO v2.docx." The document gave a brief description of the company, the current services offered, and past satisfied clients. Included among services offered were critical infrastructure analysis and non-proliferation analysis. Under critical infrastructure analysis was listed subject matter expertise in the chemical and nuclear sector. Under non-proliferation analysis was listed support to NRC on tracking nuclear technology and support to Domestic Nuclear Detection Office on trafficking of nuclear material. A list of past satisfied clients included DHS and NRC. Under DHS was Office of Intelligence and Analysis, Office of Infrastructure Protection, and Domestic Nuclear Detection Office. Under NRC was Intelligence Liaison Threat Branch.

Some of the emails found consisted of getting Two Arrows Consulting President's approval of a description of Two Arrows Consulting, sub-contracting opportunities for (b)(7)(C) listing Two Arrows Consulting as a start-up business for tax purposes, dates and contents of Two Arrows Consulting board meetings, and Two Arrows Consulting's marketing strategies and pricing. OIG (b)(7)(E) did not find any

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evidence of Official Use Only (OUO) or classified information in the emails related to (b)(7)(C) from (b)(7)(C) NRC computer.

Computer Forensic Analysis of (b)(7)(C) Personal Digital Media

OIG was notified by (b)(7)(C) Two Arrows Consulting, Inc., that BUNCH committed suicide on March 7, 2016. OIG contacted Bunch's (b)(7)(C) (b)(7)(C) to coordinate return of BUNCH's personal effects from his NRC office. While returning personal effects, OIG obtained consent from (b)(7)(C) to search (b)(7)(C) personal digital media. Based on (b)(7)(C) voluntary consent, OIG (b)(7)(C) (E) conducted forensic imaging and analysis of a Toshiba external hard drive, six thumb drives, and an Apple MacBook Pro. The results of the analysis revealed the following:

- The Micro Center 2 GB thumb drive contained a document named "Quest" and marked Unclassified, "For Official Use Only" (FOUO). "Quest" was the NRC foreign travel debrief questionnaire form.
- The SanDisk Cruzer Mini 256 thumb drive contained a document named 11 April Nuclear Brief.ppt marked Unclassified, FOUO. The document was a DHS, Office of Intelligence and Analysis, brief on nuclear sector threats dated April 14, 2011.
- The other digital media contained many personal pictures and documents, but OIG did not identify any information specific to NRC or Two Arrows Consulting.

Although OIG found Unclassified, FOUO documents on BUNCH's personal digital media, OIG did not identify any classified documents on the digital media. (b)(7)(C) told OIG that although foreign travel debrief questionnaire was FOUO, it was unclassified and not considered a spillage of information. Her recommendation was to wipe it from the thumb drive prior to returning the digital media to (b)(7)(C)

Review of Subpoena Documents

Pursuant to an OIG subpoena, Two Arrows Consulting provided OIG direct access to BUNCH's email account, rob.bunch@two-arrows.com. OIG review of the email account reflected that someone had routinely checked the account from November 20, 2012, until September 27, 2015. The email account contents pertained mostly to perspective employees, future contracts, marketing, and potential conferences. OIG did not identify any mention of NRC in the emails reviewed and did not identify any OUO or classified information in any of the emails reviewed.

Based on subpoenaed documents provided by Two Arrows Consulting, the company was awarded a contract with Octo Consulting Group, Inc., to support Octo in delivery of Acquisition Engineering Services. According to the documents, this was the only contract awarded to Two Arrows, and (b)(7)(C) was the sole performer on the contract. According to the subpoenaed documents, BUNCH managed the company's Web site,

www.two-arrows.com, until July 2015, when he no longer participated in Two Arrows Consulting due to personal issues. BUNCH transferred management of the Web site to (b)(7)(C) in December 2015. Two Arrows Consulting had no records of any applications made by BUNCH for access to law enforcement data bases.

Interview of (b)(7)(C)

(b)(7)(C), OGC, (b)(7)(C) told OIG that there appeared to be no violation of MD 7.8 because Two Arrows Consulting clients did not meet the criteria of being one of the eight entities regulated by the Commission or having a foreign government nexus. He said there was a violation of MD 2.7 and 5 CFR 2635.702 for use of NRC information technology equipment to conduct a personal business and a potential violation of 5 CFR 2635.702 for listing NRC as a satisfied client on the document discovered.

(b)(7)(C) also said there was a potential violation of MD 7.9 and 5 CFR 2635.502 for causing a reasonable person to question the impartiality between BUNCH and Two Arrows Consulting clients due to his NRC duties dealing with some of the clients. In addition, there was a potential violation of 5 CFR 2635.703 due to BUNCH having NRC's foreign travel debrief questionnaire, which was OUO, on his personal thumb drive.

Contact with Fauquier County Sheriff's Department

OIG contacted Detective (b)(7)(C) investigating officer of BUNCH's death, to confirm that BUNCH passed away on March 7, 2016, and to determine the cause of death. (b)(7)(C) told OIG that BUNCH was found deceased on March 7, 2016, and that on April 5, 2016 the Medical Examiner ruled BUNCH's death a suicide by carbon monoxide poisoning. [Investigative Note: No additional interviews were conducted following BUNCH's death.]

This investigation identified evidence that BUNCH conducted business related to Two Arrows Consulting on his Government issued computer and potentially misused his Government position due to his relationship with Two Arrows Consulting. Although BUNCH was in possession of non-public FOUO documents on his personal thumb drives, OIG did not identify any evidence that BUNCH improperly used that information. Because BUNCH committed suicide, it is recommended that this case be closed to the files of this office.

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Distribution:
Case File 16-004

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OIG	OIG	(b)(7)(C)	OIG (b)(7)(C)	OIG	OIG	OIG
(b)(7)(C)	(b)(7)(C)		(b)(7)(C)	J. McMillan	D. Lee	H. Bell
/ /16	7/26/16	/ /16	7/26/16	7/26/16	/ /16	8/13/16

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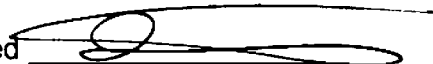


**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**


**OFFICE OF THE
INSPECTOR GENERAL**

February 24, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
For Investigations

THRU:

(b)(7)(C) 
(b)(7)(C) Team Leader, (b)(7)(C)
(b)(7)(C)
(b)(7)(C) Special Agent, (b)(7)(C)

FROM:

**SUBJECT: ALLEGED INTENTIONAL WITHHOLDING OF
INFORMATION FROM FORMER NRC CHAIRMAN BY NRC
STAFF (OIG CASE NO. 16-11)**

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), received an allegation from (b)(7)(C) Office of the Chairman, NRC, concerning comments made by (b)(7)(C) to Chairman Stephen BURNS during an October 29, 2015, briefing on Westinghouse's Job Shadow Program with China. According to (b)(7)(C) told Chairman BURNS that the staff had knowingly provided inaccurate information to former Chairman Allison MACFARLANE in a Job Shadow Program chronology document in July 2014.

Findings

OIG found that (b)(7)(C) incorrectly informed Chairman BURNS in October 2015 that NRC staff had knowingly provided MACFARLANE with inaccurate information

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about the Westinghouse Job Shadow Program in July 2014. A review of the matter by the Office of Nuclear Security and Incident Response (NSIR) determined that NRC staff inadvertently provided incomplete information to MACFARLANE about the highly sensitive program in July 2014 based on limited information that had been available to them at the time. After the October 2015 briefing with Chairman BURNS, (b)(7)(C) was informed that (b)(7)(C) had misspoken and that the individuals who compiled the information for MACFARLANE provided accurate information to her as they knew it.

Basis for Findings

(b)(7)(C) told OIG he first received a briefing from NSIR staff during the week of October 19, 2015, concerning the background and history of the Westinghouse Job Shadow program with China for the AP1000 exchange. He requested Chairman BURNS receive the brief and it was scheduled for October 29, 2015. At the Chairman's brief, (b)(7)(C) presented information that had not been presented previously concerning the timeline of events, and she conveyed that NSIR staff may have misrepresented information provided to former Chairman MACFARLANE. (b)(7)(C) discussed (b)(7)(C) comment with (b)(7)(C) after the meeting and indicated to (b)(7)(C) he would follow up. (b)(7)(C) subsequently learned from his staff that the individuals compiling the information at the time provided accurate information as they knew it, and (b)(7)(C) provided clarifying information to (b)(7)(C) verbally on November 9, 2015.

(b)(7)(C) NSIR, and former (b)(7)(C) MACFARLANE, told OIG that MACFARLANE knew the sensitivities of the FBI's activities as early as May 2014. He was aware that MACFARLANE had been briefed by (b)(7)(C) Office of Investigations (OI), concerning an OI investigation pertaining to the Job Shadow program and that MACFARLANE had received a copy of the investigation. [Investigative Note: (b)(7)(C) corroborated this to OIG.] (b)(7)(C) surmised that the chronology document (which (b)(7)(C) referred to during the briefing with Chairman BURNS) was developed by individuals who did not have all the information.

OIG reviewed an email dated November 4, 2015, from (b)(7)(C) to (b)(7)(C) (b)(7)(C) reflecting the outcome of the staff's review of the accuracy issue. The email, subsequently forwarded to (b)(7)(C) reflected that staff had spoken with the individuals involved with providing input to the document in question and determined these individuals were not aware of all available information and inadvertently provided incorrect information, "which led to the development of the one-sentence statement in the document in question." (b)(7)(C) wrote, "We have no reason to believe that anyone deliberately misled the former Chairman," and noted that the nature of intelligence work

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is that information is tightly controlled and compartmented; the information in question was provided under a short deadline, “meaning that it was not well-researched or well vetted”; and the staff would have arrived at and communicated a more complete answer in a less time-constrained environment.

(b)(7)(C) told OIG that she had made a misstatement to the Chairman on October 29, 2015, about the accuracy of information provided to the former Chairman in approximately July 2014. Shortly after the meeting she coordinated with (b)(7)(C) and (b)(7)(C) NSIR (b)(7)(C) to correct and resolve the matter. She believed (b)(7)(C) had discussed this matter with (b)(7)(C).

OIG provided (b)(7)(C) these findings on November 20, 2015, and asked (b)(7)(C) if he recalled the additional conversation with (b)(7)(C). (b)(7)(C) replied he was not sure, but recalled talking to (b)(7)(C) from the White House on/about November 6, 2015. (b)(7)(C) did not recall discussing these additional details with MCCREE, but stated it was possible (b)(7)(C) closed this information followup with him; he did not remember.

Based on the above chronology and facts indicating information was not intentionally withheld from then Chairman MACFARLANE, it is recommended that this investigation be closed to the files of this office.

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Distribution

Case File 16-11

Historical File

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OIG (b)(7)(C)	OIG	(b)(7)(C)	OIG (b)(7)(C)	OIG J. McMillan	OIG D. Lee	OIG H. Bell
02/16/16	02/18/16	02/19/16	02/21/16	02/24/16	3/1/16 02/27/16	3/1/16 02/27/16

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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

November 8, 2016

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

(b)(7)(C)

FROM:

Special Agent, (b)(7)(C)

SUBJECT:

ALLEGED PRE-SELECTION BY U.S. NUCLEAR
REGULATORY COMMISSION REGION II MANAGEMENT
(OIG CASE NO. C16-15)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an anonymous allegation that in January 2016,

(b)(7)(C) Region II, NRC,

directed regional managers to terminate a 6-month (b)(7)(C)

rotation assignment being filled by (b)(7)(C) Also, during a meeting with

(b)(7)(C)

instructed managers to write a position description that ensured (b)(7)(C) got a permanent GG-14 (b)(7)(C) position.

Potential violation relevant to this allegation is provisions in 5 CFR 2635.101, "Basic Obligation of Public Service."

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Findings

OIG did not substantiate that Region II managers improperly terminated a temporary (b)(7)(C) position or that managers later posted a permanent (b)(7)(C) vacancy position and preselected the same individual who previously held the temporary (b)(7)(C) position. OIG found that (b)(7)(C) was initially selected for a (non-competitive) temporary promotion as the (b)(7)(C) assigned at (b)(7)(C) Unit 2. After the completion of this assignment, (b)(7)(C) was selected to fill a competitive temporary promotion assignment not to exceed 1 year for the (b)(7)(C) position at (b)(7)(C) Unit 2. Both the non-competitive and competitive temporary promotions were allowed under guidelines established in Management Directive 10.1, *Recruitments, Appointments and Merit Staffing*.

Chronology

On February 26, 2015, (b)(7)(C) then (b)(7)(C) Division of Reactor Safety (DRS), Region II, NRC, selected (b)(7)(C) to fill a temporary promotion for the (b)(7)(C) position for (b)(7)(C) 2 with an effective date of May 31, 2015.

On May 31, 2015, Standard Form 50 action for (b)(7)(C) indicated a temporary promotion from GG-13 step 10 to GG-14 step 6, not to exceed (NTE) September 5, 2015.

On September 6, 2015, Standard Form 50 action for (b)(7)(C) indicated an extension of promotion (GG-14 step 6), NTE November 28, 2015.

On November 29, 2015, Standard Form 50 action for (b)(7)(C) indicated a change to lower grade from GG-14 step 6 to GG-13 step 10.

From January 15, 2016 – January 22, 2016, job announcement R-II/DRP-2016-001 was posted for an (b)(7)(C) 2) for series and grade of GG-0840-14; NTE 1 year.

On February 7, 2016, Standard Form 50 action for (b)(7)(C) indicated a temporary promotion from GG-13 step 10 to GG-14 step 6. (b)(7)(C) was selected from announcement R-II-DRS-2016-001. The Standard Form 50 also indicated that the duration of the temporary assignment will coincide with power ascension testing for (b)(7)(C) Unit 2 but is NTE 1 year. (Although the announcement indicated the position was under the DRS, the position was assigned to DRP resulting from a reorganization.)

On June 17, 2016, Standard Form 50 action for (b)(7)(C) indicated a change to a lower grade from GG-14 step 6 to GG-13 step 10. This form also indicated that (b)(7)(C) resigned from the agency to seek another job opportunity.

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Basis for Findings

(b)(7)(C)

(b)(7)(C) NRC Headquarters, advised OIG that Region II's actions in filling the temporary (b)(7)(C) position for (b)(7)(C) Unit 2 in 2015 and 2016 was accomplished in accordance with guidance contained in Management Directive 10.1, *Recruitments, Appointments and Merit Staffing*. Specifically, under the Management Directive, 180 day temporary, non-competitive promotions are allowed. She recalled that Region II initially requested to extend (b)(7)(C) initial non-competitive promotion, which was not approved by her office. According to (b)(7)(C) it was not prudent to extend a non-competitive promotion beyond 180 days. (b)(7)(C) stated Region II was advised to competitively advertise the position through a job announcement after the first 180 day period ended because of the continuing need. [Investigative note: the initial non-competitive promotion was extended from November 6 - 28, 2015.]

Based on interviews of Region II staff, OIG learned that (b)(7)(C) was non-competitively promoted to a temporary GG-14 position for the period of May 31, 2015 to November 28, 2015; the selecting official was (b)(7)(C). The need for a temporary GG-14 (b)(7)(C) continued to exist at (b)(7)(C) 2 after the 180 day period was completed in November 2015. Region II management first sought to extend (b)(7)(C) in the (b)(7)(C) position when the 180-day period was nearing completion (Fall 2015). When Region II realized that an extension beyond November 2015 was not feasible, they decided to advertise the position. The GG-14 vacancy for the (b)(7)(C) (b)(7)(C) 2 position was competitively announced in January 2016. Terms of the temporary GG-14 promotion were that the position would not exceed 1 year, or until testing, inspection, and construction was completed on (b)(7)(C) Unit 2, whichever occurred first. The open period for the announcement was from January 15, 2016 – January 22, 2016.

OIG interviewed (b)(7)(C) Region II, NRC, who advised that during a site visit on January 6, 2016, she learned from (b)(7)(C) that he was no longer receiving (b)(7)(C) pay. Prior to this discussion, she knew that his 180-day period had expired and that managers were trying to extend him in the position, but heard no more of it. Upon returning from the site visit, she instructed the (b)(7)(C) and (b)(7)(C) to post the position to get it in the hiring process. At the time of the OIG interview, she was not aware who had been selected.

OIG interviewed (b)(7)(C) DRP, Region II, NRC, and learned that (b)(7)(C) was first selected to the temporary (b)(7)(C) position at (b)(7)(C) 2 by (b)(7)(C). At the time, (b)(7)(C) was a (b)(7)(C) at (b)(7)(C) 2 when the (b)(7)(C) position was vacated by (b)(7)(C). (b)(7)(C) stated (b)(7)(C) reverted back to a GG-13 position when the temporary promotion to (b)(7)(C) (180 day) ended in November 2015 after 180 days. Prior to the second (b)(7)(C) posting in

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January 2016, there was a concerted effort to find a way to extend (b)(7)(C) because he was the logical choice; however, (b)(7)(C) contends he and management essentially decided to start the hiring process over with the new announcement. (b)(7)(C) wrote the announcement. According to (b)(7)(C), he was never “strong-armed” by anyone, including (b)(7)(C) to craft the announcement for (b)(7)(C) or to select (b)(7)(C) for the position. (b)(7)(C) said he was the selecting official and after reviewing the two qualifying packages, he selected (b)(7)(C) as the most qualified, on or about February 2, 2016.

According to (b)(7)(C) (b)(7)(C) DRP, Region II, NRC, the new (b)(7)(C) (b)(7)(C) 2 position is temporary because once the unit comes online and the start-up testing and inspections are completed the (b)(7)(C) position will cease. He recalled that the Region II leadership team made the decision to post the (b)(7)(C) 2 position. He denied that (b)(7)(C) had instructed him or others to write the position description for (b)(7)(C) (b)(7)(C) commented it was ironic he was being asked these questions because (b)(7)(C) was conscious that if the position was announced and (b)(7)(C) was selected it would be perceived as pre-selection. (b)(7)(C) does not believe preselection occurred, namely because everyone wanted to avoid that situation, and the perception of it, and everyone was careful to make sure they were not doing it. At the same time, the unique requirements for (b)(7)(C) Unit 2 would narrow the eligible list to a few individuals that possessed the necessary skill set.

(b)(7)(C) (b)(7)(C) Region II, NRC, told OIG that (b)(7)(C) filled a temporary (b)(7)(C) position, GG-14, from May 31- November 30, 2015. The position was not to exceed 180 days. As of October or November of 2015, the positions at (b)(7)(C) were re-organized under DRP. (b)(7)(C) confirmed that (b)(7)(C) was the selecting official for the current (b)(7)(C) position. Two individuals applied and made the certification list, including (b)(7)(C). At the time of the OIG interview, she heard verbally from (b)(7)(C) that (b)(7)(C) was selected to fill the position. She was not aware of any inappropriate action during this process and stated (b)(7)(C) was fully qualified and met the certification criteria.

(b)(7)(C) (b)(7)(C) Region II, NRC, told OIG that he was not involved in the hiring process for the (b)(7)(C) position at (b)(7)(C) 2. He did not recall any conversation concerning the (b)(7)(C) 2 (b)(7)(C) position with (b)(7)(C) also stated he did not witness (b)(7)(C) discussing the (b)(7)(C) 2 position with branch chiefs.

Because OIG did not substantiate any misconduct by Region II managers pertaining to either the non-competitive temporary promotion or the competitive temporary promotion for the (b)(7)(C) Unit 2 position, it is recommended that this matter be closed to the files of the office.

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Distribution:

Case File C16-015

Magnum

OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)
			J. McMillan	D. Lee	H. Bell
10/13/16	10/13/16	10/18/16	10/18/16	11/27/16	11/15/16

Official File Copy



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2019-000182

1

RESPONSE
TYPE

INTERIM



FINAL

REQUESTER:

DATE:

04/23/2019

DESCRIPTION OF REQUESTED RECORDS:

The "final report, report of investigation, closing memo, or other conclusory document" from 27 enumerated Office of Inspector General (OIG) investigations, not otherwise addressed in response to your request (NRC-2019-000076) for several of the same OIG investigations.

PART I. -- INFORMATION RELEASED

- ☐ The NRC has made some, or all, of the requested records publicly available through one or more of the following means: (1) <https://www.nrc.gov>; (2) public ADAMS, <https://www.nrc.gov/reading-rm/adams.html>; (3) microfiche available in the NRC Public Document Room; or FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>.
- ☒ Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (See Part I.D -- Comments) for a disclosure determination and direct response to you.
- ☒ We are continuing to process your request.
- ☐ See Part I.D -- Comments.

PART I.A -- FEES

AMOUNT

\$0.00

- ☐ You will be billed by NRC for the amount indicated.
- ☐ You will receive a refund for the amount indicated.
- ☐ Fees waived.

- ☐ Since the minimum fee threshold was not met, you will not be charged fees.
- ☐ Due to our delayed response, you will not be charged search and/or duplication fees that would otherwise be applicable to your request.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- ☐ We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- ☒ We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☒ Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- ☐ You may appeal this final determination within 90 calendar days of the date of this response. If you submit an appeal by mail, address it to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Mail Stop T-2 F43, Washington, D.C. 20555-0001. You may submit an appeal by e-mail to FOIA.resource@nrc.gov. You may fax an appeal to (301) 415-5130. Or you may submit an appeal through FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>. Please be sure to include on your submission that it is a "FOIA Appeal."

PART I.C -- REFERENCES AND POINTS OF CONTACT

You have the right to seek assistance from the NRC's FOIA Public Liaison by submitting your inquiry at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>, or by calling the FOIA Public Liaison at (301) 415-1276.

If we have denied your request, you have the right to seek dispute resolution services from the NRC's Public Liaison or the Office of Government Information Services (OGIS). To seek dispute resolution services from OGIS, you may e-mail OGIS at ogis@nara.gov, send a fax to (202) 741-5789, or send a letter to: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. For additional information about OGIS, please visit the OGIS website at <https://www.archives.gov/ogis>.



**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST**

2019-000182

1

RESPONSE
TYPE



INTERIM



FINAL

PART I.D -- COMMENTS

In response to your previous request, NRC-2019-000076, we addressed six reports of investigation (ROI's) from OIG investigations, C13-022, C14-007, C15-006, C15-007, C15-038 (which had been mistakenly typewritten as C14-038 in your request but you confirmed you meant C15-038), and C16-014, which you also asked for in this request. As such, we have excluded them from the scope of this request.

In addition, both of your requests asked for the ROI from OIG investigation C13-055. As we informed you in our response to NRC-2019-000076, that ROI (as well as the entire contents of the investigation file) remains the subject of a pending FOIA request submitted by another requester. At this time, we are awaiting a response from one more program office as to certain information contained in the investigative file, including the ROI itself. Moreover, the ROI for C15-017 also contains information tied to this pending referral. So as not to further delay our response, we are issuing this interim response. The investigations to which these ROI's pertain are as follows:

C12-056	C15-021	C15-037
C12-080	C15-024	C15-040
C13-051	C15-026	C15-041
C13-052	C15-027	C16-004
C14-011	C15-030	C16-011
C15-003	C15-031	C16-015
C15-019		

We will issue a second, and final, response once FOIA processing of the ROI's for OIG investigations C13-055 and C15-017 has been completed. Thank you for your patience.

Signature - Assistant Inspector General for Investigations or Designee

Rocco J. Pierri

Digitally signed by Rocco J. Pierri
Date: 2019.04.23 12:32:58 -04'00'

2019-000182#1

DATE:

04/23/2019

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST****PART II.A -- APPLICABLE EXEMPTIONS**

Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to an Executive Order protecting national security information.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by the statute indicated.
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Other:
- ☐ Exemption 4: The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☐ The information is considered to be another type of confidential business (proprietary) information.
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Exemption 5: The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
- ☐ Deliberative process privilege.
- ☐ Attorney work product privilege.
- ☐ Attorney-client privilege.
- ☐ Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☒ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an open enforcement proceeding.
- ☒ (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☒ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ Other

PART II.B -- DENYING OFFICIAL

In accordance with 10 CFR 9.25(g)(1) of the U.S. Nuclear Regulatory Commission regulations, the official listed below has made the determination to withhold certain information, described below, responsive to your request.

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL
Rocco Pierri	Assistant Inspector General for Investigations	personally identifiable information of third parties and investigative techniques	Inspector General



OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

March 30, 2016

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, (b)(7)(C)

SUBJECT: POTENTIAL LACK OF OVERSIGHT OF WATER LEAKAGE
AND SAFETY CULTURE AT PALISADES NUCLEAR
POWER PLANT BY REGION III (OIG CASE NO. 12-056)

Allegation

The Office of Inspector General (OIG) U.S. Nuclear Regulatory Commission (NRC), initiated an investigation to address concerns over two specific issues raised by members of the public and Congress regarding safety concerns at the Palisades Nuclear Plant in Covert, MI.

Issue 1: Safety Injection Refueling Water Tank (SIRWT) Leakage

The first issue addressed in the investigation involved the NRC response to the May 2011 discovery of a water leak in the control room at Palisades. This ultimately resulted in a June 2012 forced maintenance outage to inspect and repair leakage that was found to originate from the SIRWT. At the time of the forced outage, it was alleged that the tank had been actively leaking for 1 year and the leak had grown in volume to approximately 31 gallons per day. The investigation addressed concerns that NRC had

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"tolerated," or otherwise inadequately responded to, a leak with the potential to affect safety related control room components.

Issue 2: Safety Culture Concerns

The second issue addressed in this investigation involved the adequacy of the NRC staff's handling of identified safety culture concerns among Palisades' employees. These issues came to light in relation to two incidents: a 2010 incident in which an on duty plant operator left the control room without proper relief or supervisory permission, and a September 2011 direct current power loss to safety related components resulting in a temporary emergency shutdown of the reactor. Among other remedial measures taken after these incidents, safety culture surveys by an outside vendor were ordered. NRC staff were alleged to have attended a meeting where safety culture survey results were presented, but neglected to obtain relevant documentation or otherwise address the plant's poor safety culture survey results.

Findings

Issue 1: SIRWT Leakage

OIG found no evidence that the NRC staff failed to act appropriately or in a timely manner when dealing with the May 2011 discovery of leakage from the SIRWT affecting the Palisades control room. NRC staff were notified on the day the leak was first detected in the control room, promptly relayed this information to regional management, and initiated regular monitoring of licensee followup. OIG found no evidence that water had leaked into the control room in sufficient quantities to cause safety related equipment failures. The NRC staff learned that the "catacombs" area, below the tank and above the control room, in which the leakage apparently originated, had not been inspected in over 20 years, and issued a green finding addressing this issue in August 2011.

OIG found that the roof above the control room was repaired in June 2011 and this stopped the leakage within the control room. However, low rate leakage within the catacombs continued at a rate of 300-500 milliliters (equivalent to 0.079 - 0.132 gallons or 10-16 fluid ounces) per day, and was monitored periodically by the licensee and NRC staff. OIG found that, under the Technical Specifications of the plant, low rate leakage would not, in and of itself, require that the SIRWT be declared inoperable and the reactor shut down. OIG and the NRC Office of Investigations (OI) developed information that between June 2011 and February 2012, the licensee staff inaccurately told NRC staff that their findings were "inconclusive" as to whether the source of the leakage was the SIRWT or other sources, such as rain. The licensee acknowledged in February 2012 that the source of leakage was the SIRWT and initiated repairs when the plant was in a scheduled shutdown condition in April 2012. OI's investigation disclosed

evidence that the licensee's ambiguity as to the source of leakage was to ensure that no unscheduled shutdown would occur prior to the scheduled April 2012 outage.

OIG found that after the tank was repaired during the scheduled outage and refilled in June 2012, a new, higher rate leak began, initially estimated at 5 gallons a day, and increasing to the 31 gallon level referenced in the allegation predicated this case. This leakage was found to have occurred due to welding problems and stresses on the tank bottom associated with the April 2012 repairs. This new leakage affected a wider portion of the catacombs area as well as resuming within the control room. Again, NRC staff responded promptly to confirm that the leakage did not affect safety related equipment. NRC staff also took steps to ensure that appropriate industry codes were applied to the analysis of this leakage to calculate how it affected operability, and NRC prevailed in a disagreement with the licensee over the setting of an appropriate, code-supported upper limit of 34.8 gallons per day on acceptable leakage for operability. On June 12, 2012, the licensee determined that the leakage rate had reached that limit, rendering the tank technically inoperable and requiring a forced shutdown. During the resulting shutdown and repair outage, the NRC sent a regional inspector with specialized expertise in metallurgy to Palisades to observe the resulting repairs to the SIRWT tank, which reduced but still did not eliminate all leakage. NRC issued a second green finding for the SIRWT leakage, for the licensee's failure to adequately evaluate the SIRWT leakage and for initially seeking to set a less conservative limit on acceptable leakage, based upon that inadequate evaluation.

The NRC also issued a July 2012 Confirmatory Action Letter (CAL) to the licensee in connection with continuing water leak issues from the SIRWT. This CAL required the licensee to institute continuous monitoring of the leakage, with shutdown required if leakage exceeded set levels, and provided the licensee with specific requirements for the repair of the tank and associated supporting structures. The CAL was closed out after additional 2013 repairs during which the licensee replaced large sections of the tank bottom and support structures beneath the SIRWT and above the control room. No further SIRWT leakage incidents have been documented since 2013.

ISSUE 2: Safety Culture Concerns

OIG found no evidence that the NRC failed to act appropriately or in a timely manner when dealing with the safety culture issues disclosed in 2010 and 2011 at Palisades. The underlying incidents that gave rise to the safety culture concerns at the plant were addressed by NRC consistently with regulatory requirements. The 2010 incident was addressed in part through NRC issuance of a confirmatory order, one of whose requirements was a survey by an outside safety culture contractor. The results of this survey were shared with NRC after it was completed in April 2012. Resident inspectors were given access to the full report to review in a licensee controlled setting and were provided with copies of the executive summary of the report. NRC staff engaged in

continued monitoring of safety culture issues, as demonstrated by the history of followup inspections between 2012 and 2014, which showed improvements in safety culture among Palisades technical and operations staff.

Basis for Findings

ISSUE 1: SIRWT Leakage

OIG review of the Palisades Technical Specifications specifically addressing the SIRWT disclosed that the standard of operability for the tank is its ability to perform its safety related function, which is to hold 200,000 to 250,000 gallons of water at specified ranges of temperature and boron concentration. The SIRWT's Limiting Condition for Operation (LCO) states, "The SIRWT shall be OPERABLE" and defines operability in terms of boron content of tank water, temperature of tank water, and volume of water contained. The LCO sets surveillance requirements, and defines time limits from detection for the correction of non-conforming conditions to maintain operability. If that correction cannot be accomplished within the time limit, the tank must be declared inoperable and the plant must shut down. The time limit is 8 hours for correction of boron levels, and 1 hour for correction of any other factor such as the temperature or volume of water contained in the tank. Surveillance requirements specify that temperature is to be checked on a 24-hour basis, and the volume and borate concentration is to be checked on a 7-day basis. A fully "leak proof" condition is not required; however, leakage of a high enough volume would prevent the tank from holding the required volume of water over the required time periods. It was noted that for the leakage that did occur in this case, applicable industry code requirements were used to identify an appropriate limit on leakage rates, finalized in a July 2012 CAL at 38 gallons per day, above which the tank would be declared inoperable because the volume of water contained could not be reasonably maintained as required in the Technical Specifications.

OIG learned through interviews of Palisades' resident inspectors and Region III management that NRC staff were notified immediately of the control room leak on May 18, 2011, and that the control room leak ceased after the licensee completed repairs to the control room roof in early June 2011. However, related licensee inspections in June 2011 identified signs of continuing leakage within the catacombs area, not affecting the control room, originating from piping in that area. That piping was identified as "Class 2" under the American Society of Mechanical Engineers (ASME) codes¹ for piping systems and vessels (such as water tanks), and thus subject to periodic inspection under 10 CFR § 50.55(a). Licensee staff told the residents that during catacombs repairs in

¹ ASME codes are detailed, proprietary standards utilized by industry and regulators to guide the testing and inspection of specified types of engineering systems. Section XI of ASME Boiler and Pressure Vessel (B & PV) Code includes requirements for the inspection of tanks and pipes.

1990, the licensee had permanently "blocked off" access to the area and declared it "inaccessible," despite the presence of the Class 2 piping within. The NRC issued a green (minor) finding for this failure to inspect Class 2 piping. Review of this inspection report disclosed that the finding was green because the leak "did not result in a loss of function for the impacted components," i.e., the leak did not render the SIRWT inoperable. After this, the licensee included the catacombs area in its regular inspection program. This is consistent with the NRC Reactor Oversight Process as referenced in Inspection Manual Chapter 2515, which states, "minor findings shall be reported to the licensee for action in accordance with the licensee's corrective action program. Licensees are expected to track and trend minor findings and issues as stated in their program."

OIG learned that from June 2011 on, the resident inspectors and Region III were briefed weekly on the above, ongoing leakage within the catacombs area. This leak was - monitored and measured throughout the period at rates between 300 and 500 ml per day, which the senior resident inspector compared to a "soda can" when interviewed. This catacombs leak was scheduled for repair during the plant's next scheduled refueling outage in April 2012. The senior resident inspector told both OIG and OI that the licensee continued throughout 2011 and into early 2012 to assert to NRC staff that their followup findings were "inconclusive" as to whether the leak source was the SIRWT. In addition, OIG and OI found that information about the September 2011 identification of short-lived radioactive isotopes in water residue from the leakage by an independent testing service was not provided to NRC staff until February 2012. Such information, if provided, would have indicated clearly that the leakage was from the tank, as opposed to rainwater, which would be clear of radioactive isotopes. A Region III manager indicated to OIG and OI that he and the resident inspectors had not been provided with complete information about the leakage by licensee personnel, using the term "daisy chaining" to refer to the licensee's handling of relevant condition reports, to indicate that the licensee, rather than correcting issues, would close an issue by incorporating it serially into new reports to artificially extend the time requiring correction of the issue. OI developed evidence that the licensee had engaged in this practice in order to minimize the possibility of an unscheduled shutdown and maintain uncertainty as to the existence of a SIRWT leak.

OIG learned that consistent with the licensee's intended schedule, during the scheduled April 2012 refueling outage, repairs were conducted on the SIRWT, with a specific nozzle flange identified and addressed as the source of the prior leakage. However, after the tank was refilled in June 2012, a new, higher rate leakage, initially estimated at 5 gallons a day, began, which was later attributed to welding problems and flexing stresses associated with the attempted repairs and refilling of the tank. This leakage affected a wider portion of the catacombs area and resumed within the control room and a nearby hallway. Catch basins were set up to contain the leakage. The new leak in the control room was reported to the senior resident inspector, who responded to the

control room and observed repairs to the roof within the space. According to the senior resident inspector, he checked the control room and found no leakage onto equipment or water residue on any equipment. He checked the area over the next few days and never witnessed any additional leakage into the control room area.

The licensee had intended to restart the plant after the tank was refilled. The senior resident inspector questioned the licensee's plans to go into the scheduled startup with leakage of, at that time, approximately 5 gallons per day coming from the SIRWT. The senior resident inspector, in cooperation with his branch chief and Region III staff, sought to assess the leakage and set a maximum acceptable leakage limit triggering declaration of inoperability and plant shutdown, which would be derived from the applicable ASME code case. The licensee provided an evaluation to NRC that set forth an erroneously calculated proposed limit at 130 gallons per day, with which the senior resident inspector disagreed as not sufficiently conservative. NRC prevailed upon the licensee to use a significantly more conservative limit of 34.8 gallons per day. On June 12, 2012, the licensee determined that the leakage rate had reached the limit and conducted a forced shutdown. During the outage, the NRC sent a regional inspector with specialized expertise in metallurgy to Palisades to observe the resulting repairs to the SIRWT, which reduced but did not eliminate the leakage. The NRC issued a second green finding in August 2012 for the licensee's failure to adequately evaluate the SIRWT leakage and for seeking an insufficiently conservative limit, based upon that inadequate evaluation. In addition, the NRC issued a July 2012 CAL requiring the following:

- 1) Daily measurement of the leakage, and periodic assessment and calculation of growth trends in the leakage until the adverse condition of the tank was corrected.
- 2) Declaration of inoperability of the SIRWT and plant shutdown upon the detection of any leakage exceeding 38 gallons per day (increased slightly from the June 2012 set limit), or upon the detection of growth trends indicating that the leakage would reach the set maximum level within 48 hours and notification to NRC of any changes in these threshold requirements.
- 3) A 26-month time limit from time of identification for repair of any active leakage of the SIRWT.
- 4) Continued inspections of the concrete support structure above the control room, control room hallway, and the concrete support structure ceiling in order to ensure the protection of safety-related structures, systems, and components.
- 5) Repairs to the concrete support structure around the ceiling of the control room, "prior to restart from the next refueling outage at Palisades" (this was at the time referencing

the January 2014 scheduled refueling outage but was overcome by the events described below).

During the licensee's monitoring of SIRWT leakage under the July 2012 CAL, the leak rate from the tank increased to a volume of 100 gallons per day in early May 2013, at which time the plant was again shut down as required in the CAL, pending additional repairs. In June 2013, during the course of these repairs, a previously unaffected nozzle connected to the SIRWT commenced leaking into the control room, with water droplets affecting one control room panel. The leakage was estimated at 4 hours in duration, with a rate of 3 drops per minute. According to the senior resident inspector he confirmed that there was no adverse impact on safety related equipment, and the leak was repaired and terminated. In August 2013, the NRC issued a third green finding in the aftermath of this series of incidents, identifying a weld failure in the nozzle as the source of this particular leak. Additional, extensive repairs were completed during this shutdown, and involved the re-draining of the tank, extensive repairs to the metal of the tank, including replacement of the tank floor, and the installation of a new supporting structure below the tank. The plant was restarted in June 2013. OIG review of inspection reports and annual and mid cycle assessments disclosed that no control room leakage has been reported to NRC since June 2013, and no SIRWT leakage has been reported to NRC since July 2013.

ISSUE 2: Safety Culture Concerns

OIG learned that safety culture issues were raised in relation to a 2010 incident in which a Palisades reactor operator departed his post without appropriate relief, and a 2011 incident in which a direct current power failure led to a plant shutdown and a subsequent NRC yellow finding. NRC addressed the 2010 incident through an enforcement resulting in a Confirmatory Order (CO); pursuant to this CO, an outside contractor conducted an April 2012 safety culture survey at Palisades.

OIG learned through interviews of resident inspectors and Region III management that the resident inspectors attended the contractor's briefing of survey results to licensee management, and reported the negative results of the survey to their branch chief. The resident inspectors requested a copy of the survey, but the licensee declined to provide it, although the residents were provided with its executive summary and allowed to access and review the full report in licensee space. The branch chief commented that this was not improper and was analogous to the NRC's handling of the Institute of Nuclear Power Operations documents and helped safeguard against inappropriate licensee identification of survey respondents. The resident inspectors were aware of licensee staff frustrations, but that these were not limited to safety culture alone. A biannual NRC Problem Identification and Resolution inspection (PI & R), conducted concurrently with the contractor survey, while less reflective of negative safety culture, identified instances in which issues were not pursued with "sufficient vigor" when

identified. A September 2012 supplemental inspection was conducted as followup to the 2011 yellow finding.

According to the branch chief, the resident inspector staff shared the information they had obtained regarding safety culture with the supplemental inspection team. In addition, according to the branch chief, during the course of the supplemental inspection, the team "performed focused inspection" covering safety culture, conducting numerous licensee staff interviews and document reviews.

OIG review of the supplemental inspection report disclosed that the inspectors found that safety culture components possibly caused or significantly contributed to performance issues. The inspection report indicated that the licensee's responses to the yellow finding, and to another, unrelated 2011 white finding, were adequate, and licensee actions to correct the conditions and prevent recurrence were deemed appropriate. However, the report also noted that safety culture at Palisades was improving as of the September 2012 timeframe of the inspection. The inspection team documented that plant employees perceived that the site was moving in the right direction, but that staffing and retention issues and the corresponding knowledge management challenges were impeding progress toward more proactive problem resolution. The report described the safety culture as "adequate and improving."

According to branch chief, NRC provided "heightened scrutiny" of plant safety culture throughout 2013 and 2014. OIG obtained and reviewed the relevant reports and noted that in 2014, the NRC conducted two additional PI & R inspections at Palisades, one in February 2014 specifically focused on safety culture issues, and a December 2014 focused inspection specifically on safety culture. Safety culture issues were identified in and addressed by these inspections. However, these were specifically associated with the Security Department at Palisades, rather than with reactor operations, and were not related to the 2010 and 2011 incidents relevant to this investigation.

Distribution

Case File 12-056

Magnum

OIG/AIGI	OIG/AIGI	Editor	OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
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OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

March 25, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

FROM:

(b)(7)(C)
Team Leader, (b)(7)(C)

SUBJECT:

CONCERNS REGARDING ADEQUACY OF REGION IV
REVIEW OF THE 2003 FORCED SHUTDOWN
AT CALLAWAY PLANT (OIG CASE NO. 12-80)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted this investigation based on two similar allegations questioning the adequacy of NRC Region IV's investigations into alleged misconduct at the Callaway Plant, a nuclear power plant in Callaway County, MO. One allegation was submitted from (b)(7)(C), an NRC employee (b)(7)(C), and the other was submitted by (b)(7)(C), a private citizen and energy consultant with whom (b)(7)(C) had discussed his concerns pertaining to Callaway. (b)(7)(C) also submitted a (b)(7)(C) to NRC about the matter, in an email dated (b)(7)(C) to the NRC Executive Director for Operations (EDO).

As conveyed in the allegations, on October 21, 2003, Callaway plant operators were in the process of lowering reactor power in anticipation of a forced shutdown when the reactor passively shut down at approximately 10:18 a.m.; however, operators failed to recognize the passive shutdown until an alarm sounded in the Main Control Room at 11:25 a.m. Then, when the (b)(7)(C) learned the reactor was no longer critical, he allowed the operators to "drag their feet" for 40 minutes to conceal the incident from his superiors instead of ensuring the operators immediately inserted the control rods to properly shut down the reactor. It was alleged that the passive reactor shutdown was never documented by the operating crew in the plant's Corrective Action

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Program, and the event was concealed from plant management until it was accidentally uncovered in February 2007 and documented with a condition report. It was also alleged that in August 2007, the (b)(7)(C) who conducted the October 21, 2003, shutdown provided incomplete and/or inaccurate information in Callaway Action Request (CAR) 200702606 concerning his knowledge of when the reactor went subcritical, and lied under oath about this during an interview with NRC's Office of Investigations (OI).

According to the allegation, three NRC investigations (RIV-2007-A-0028, OI Case 4-2007-049, and Allegation RIV-2007-A-0096) into the October 21, 2003, incident did not assess whether the operators at Callaway were aware that the reactor was subcritical between 10:18 a.m. and 11:25 a.m., and the two investigations that occurred after August 2007 did not indicate having examined the accuracy or completeness of information in CAR 200702606.

Findings

OIG monitored the staff's actions in response to (b)(7)(C) concerns and found that, collectively, three Region IV reviews of his allegations examined the reasons for the time delay before shutting down the reactor, the plant's handling of the matter and documentation in its corrective action program, and whether there was a willful failure to document the issue properly. These reviews (1) determined plant operators may not have exercised optimum reactivity management and lacked adequate plant awareness, (2) did not substantiate that the operations crew left the control rods withdrawn so they would not have to admit to upper management having lost control of the reactor, and (3) did not substantiate that Callaway control room personnel willfully failed to document a temperature transient on October 21, 2003. In addition, following (b)(7)(C) email to the EDO, Region IV performed a line-by-line comparison and cross-referenced (b)(7)(C) concerns with NRC's responses to those concerns and determined NRC had already addressed the concerns and the email did not provide any new allegations.

OIG also found that the agency did not communicate to (b)(7)(C) until 2014 that it had addressed, and found unsubstantiated, his specific concern about the accuracy of statements in CAR 200702606.

Basis of Findings

Chronology/Background

OIG compiled the following chronology and technical analysis of events based on (1) interviews with NRC Region IV and Office of Nuclear Reactor Regulation staff; (2)

review of transcripts of interviews conducted by OI; (3) correspondence between (b)(7)(C) and NRC and a member of Missouri's House of Representatives; and (4) Callaway operational information related to the event.

At 7:21 a.m. on October 20, 2003, a Callaway nuclear power plant safety related electrical component, an instrument inverter, became inoperable, requiring the plant to begin a shutdown within 24 hours and to be shut down within 30 hours in accordance with plant technical specifications. Plant technical specifications are part of the plant's NRC license and the licensee must comply with them.

After discovery of the failed inverter, plant staff made efforts to repair it. These efforts were unsuccessful, and plant staff began reducing the power of the reactor at a rate of 10 percent/hour starting at 1 a.m. on October 21 to comply with technical specifications. By 7:21 a.m., 24 hours after the failure of the inverter, the inverter had still not been repaired; thus, technical specifications required that the reactor be completely shut down by 1:21 p.m.

When power in a reactor is reduced, an isotope of the element Xenon, Xenon-135, increases and peaks about 10 hours after the power reduction occurs. Xenon-135 absorbs neutrons in the reactor and reduces the reactor's power. As the power in Callaway reactor was reduced, Xenon-135 began increasing contributing to the power reduction and eventual shutdown of the reactor.

Reactor power had been reduced as planned to about 10 percent by 10 a.m. when the letdown system automatically isolated. The letdown system automatically removes water from the reactor coolant system (RCS) to maintain the correct water volume when reactor temperature changes. The isolation occurred because the water volume had been reduced in the RCS because of the power reduction and associated cool down. Isolation of the letdown system made operations more complicated and were a distraction for the plant staff, but letdown was restored at 10:48 a.m. Possibly because of this distraction, the reactor temperature was allowed to reach its lower limit allowed by technical specifications. When this was detected by the plant staff, (b)(7)(C) ordered the main turbine generator tripped, which had the effect of stopping the cooldown and increasing the temperature of the reactor. This occurred at 10:12 a.m.

Reactors like Callaway are designed so that an increase in temperature will reduce the power of the reactor. After the main turbine generator was tripped, both the temperature increase and the increase in Xenon-135 were contributing to the power reduction. The combined effect of temperature and Xenon-135 caused the reactor to become sub-critical. The normal means of controlling reactor power is with the control

rods in the reactor and with the boric acid concentration in the RCS. NRC determined that the Callaway operators were not aware¹ that the reactor had become sub-critical and did not effectively control reactor power to maintain the reactor in the desired condition, but also concluded that the reactor was maintained in a safe condition.

Callaway reactor was subsequently completely shut down, the inverter repaired, and the plant returned to service on October 24, 2003.

[Investigative Note: In a June 27, 2011, letter to the EDO, OIG reported the results of OIG Case No. 11-23 investigation into a separate allegation from (b)(7)(C) pertaining to the October 21, 2003, Callaway shutdown. In that investigation, OIG found that NRC Region IV staff provided inaccurate information concerning the timing of "shutdown margin verification" in a letter sent to (b)(7)(C) and (b)(7)(C) (b)(7)(C), pertaining to the event. OIG did not find any evidence that the staff intentionally provided inaccurate information, and briefed Region IV on the matter.]

NRC Review of Callaway Incident

As referenced in the allegation submitted by (b)(7)(C) and (b)(7)(C), the Callaway incident was reviewed by NRC Region IV on three separate occasions. RIV-2007-A-0028, received on March 2, 2007 and closed on August 8, 2007, addressed, among other concerns, an allegation that while shutting down to Mode 3, the RCS temperature dropped below the minimum temperature for critical operation; however, the temperature transient was not documented in a condition report until 38 days later, and it was not documented in the shift supervisor log. Moreover, the condition report did not address why the control rods were not inserted until 90 minutes after the reactor shut down. Another concern was that the licensee may have intentionally waited 90 minutes to fully insert control rods following shutting down the reactor to avoid scrutiny of crew actions and that such a purposeful delay, along with failure to properly document the incident, was dishonest and negligent. NRC found the first concern was contrary to the licensee's technical specification requirements and planned to document the violation in an inspection report. With regard to the second concern, NRC staff determined that the time delay was not prudent and suggested that the operators may not have exercised optimum reactivity management and may have lacked adequate plant awareness. The staff's review of operating procedures did not find any timeliness guidance on performing the steps to insert the control rods.

¹ NRC reported its conclusion that the operators were not aware the reactor had become sub-critical in a letter, dated August 25, 2011, to Representative Jeannette Mott Oxford.

RIV-2007-0096, received on September 27, 2007 and closed on February 26, 2010, reviewed a concern related to the prior contention (in RIV-2007-A-0028) that the Callaway operating crew lost control of core reactivity and left the control rods withdrawn for 90 minutes. The allegation contended that the control rods were not inserted so the crew did not have to admit to upper management that it had lost control of the reactor. The summary stated that although the alleged provided reasons why the crew's action should be the subject of an OI investigation, the alleged did not provide a reason why the crew's actions were unsafe or failed to comply with the licensee's procedures or NRC's requirements. NRC's investigation found that reactor power was not well managed during the October 2003 shutdown and substantiated that the licensee failed to document the matter properly in its corrective action program. This was a violation of an NRC requirement and was documented as a non-cited violation in NRC inspection Report 05000483/2007003. NRC did not substantiate that the operations crew left the control rods withdrawn so they would not have to admit to upper management that it had lost control of the reactor.

OI Case No. 4-2007-049, "Failure To Document a Temperature Transient by Control Room Personnel," initiated on September 28, 2007 and closed on May 9, 2008, did not substantiate that Callaway control room personnel willfully failed to document a temperature transient on October 21, 2003.

Interview of Region IV (b)(7)(C)

(b)(7)(C)

Region IV, NRC, told OIG she personally reviewed NRC's files pertaining to (b)(7)(C) allegations; (b)(7)(C), and the Region IV OI case files and transcripts pertaining to the October 21, 2003, shutdown of Callaway nuclear power plant. She did a line-by-line comparison and cross-referenced the concerns raised by (b)(7)(C) and NRC responses to those concerns to determine if (b)(7)(C) had raised any new issues in his (b)(7)(C) correspondence to the EDO. She found that (b)(7)(C) concerns had been addressed by the NRC and that (b)(7)(C) did not identify any new allegations that had not been previously addressed by the NRC. (b)(7)(C) noted that one of the concerns was that the (b)(7)(C) did not provide complete and accurate information in CAR 200702606. Because there was no indication that this specific concern had been previously identified or addressed by NRC, an Allegation Review Board assigned an action for ACES and OI to review the transcript of the interview with the (b)(7)(C) and compare it to CAR 200702606. Her review determined that no new issues were raised and there were no substantive discrepancies between the CAR and the transcript. Because there were no discrepancies between the two, combined with the fact that the information contained in both was consistent with other documents previously reviewed, she found no indication

that the (b)(7)(C) failed to provide complete and accurate information in the CAR.

(b)(7)(C) told OIG that the licensee did not initiate a CAR for going below minimum critical temperature on October 21, 2003, which was a procedural violation. It did not violate the technical specification; therefore, NRC documented it as a non-cited violation in NRC Inspection Report 05000483/2007003. She said there were no safety concerns and the reactor was never in an unsafe condition. She said that the licensee's actions were inconsistent with good operating procedures; however, these actions did not violate NRC regulations.

Interview of (b)(7)(C)

(b)(7)(C) Office of Enforcement (OE), NRC, told OIG she received an email in approximately (b)(7)(C) from (b)(7)(C) documenting his concerns pertaining to the October 21, 2003, shutdown of Callaway. She identified one new allegation in (b)(7)(C) correspondence that she wanted to enter into NRC's allegation program. The allegation pertained to a Callaway manager intentionally entering misleading information in the Callaway Quality Assurance Record (QAR). OI had previously investigated the allegation and determined that the manager had not intentionally entered misleading information into the record. (b)(7)(C) said NRC had the answer to (b)(7)(C) allegation, but had not communicated it to him in NRC correspondence concerning the allegations or in (b)(7)(C). She said this was a mistake and NRC needed to enter it as a new allegation into NRC's allegation program and provide a response to (b)(7)(C). However, her supervisor at the time, (b)(7)(C) instructed her not to enter it into NRC's allegation program because the Chairman and EDO had assumed responsibility for responding to (b)(7)(C). She was told that NRC was conducting an assessment of (b)(7)(C) issues and was going to issue an all-encompassing letter to (b)(7)(C) covering every allegation he raised, including the allegation about misleading information in the QAR. She was told that she would be able to review the NRC letter to ensure the issue was addressed.

[Investigative Note: OIG learned that the Office of the General Counsel did not issue to (b)(7)(C) the "all-encompassing" letter (b)(7)(C) thought would be issued and that OE handled the response to the allegation conveyed by (b)(7)(C) and provided NRC's response in a November 13, 2014, letter from (b)(7)(C) to (b)(7)(C).]

OIG Review of NRC's November 13, 2014, letter to (b)(7)(C)

OIG reviewed a letter, dated November 13, 2014, from (b)(7)(C) to (b)(7)(C) in which (b)(7)(C) described (b)(7)(C) concern and provided the agency's response. In response to (b)(7)(C) concern that NRC did not evaluate the accuracy of statements made in the Corrective Action Request System (CARS) 200202606 document, she wrote, "As previously discussed with you on July 10, 2014, the NRC OE conducted a review of the allegation files and discussed the issue with knowledgeable members of the NRC staff. The OE concluded that the staff did indeed evaluate CARS 200702606 and did not substantiate your concern."

(b)(7)(C) said that as noted in a July 1, 2014, letter from former NRC Chairman Allison MACFARLANE to a member of the Missouri House of Representatives,

...NRC has addressed your concerns regarding the October 21, 2003, Callaway plant shutdown multiple times through correspondence and meetings. You may disagree with some of the NRC staff's findings, but the NRC has concluded, based on its independent inspection and investigation, that there is no evidence that would indicate that there was wrongdoing, such as a cover-up, concerning the shutdown event. In the absence of new information, there is no regulatory or safety basis for NRC to expend further resources related to the October 21, 2003, Callaway plant shutdown. Therefore, the NRC has closed this matter, and the staff plans to provide no additional feedback regarding this issue.

Because OIG did not identify evidence suggesting NRC staff did not address (b)(7)(C) concerns, and the allegations did not provide new information for consideration by NRC, it is recommended that this case be closed to the files of this office.

Distribution

Case File 12-80

Magnum

OIG (b)(7)(C)	(b)(7)(C)	OIG (b)(7)(C)	OIG J. McMillan	OIG D. Lee	OIG H. Bell
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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001



OFFICE OF THE
INSPECTOR GENERAL

April 2, 2015

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

(b)(7)(C)

FROM:

Special Agent, (b)(7)(C)

SUBJECT:

INAPPROPRIATE INFLUENCE ON THE NRC'S MERIT
SELECTION PROCESS BY NMSS MANAGER (OIG CASE
NO. 13-51)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an allegation that (b)(7)(C)

(b)(7)(C) Office of Nuclear Materials Safety and Safeguards (NMSS), had an inappropriate role in the hiring selection of (b)(7)(C) as a (b)(7)(C) in the (b)(7)(C) and in the hiring selection of (b)(7)(C) as a (b)(7)(C) in the NMSS (b)(7)(C). [Note: this occurred prior to (b)(7)(C) holding her current assignment as (b)(7)(C). It was further alleged that (b)(7)(C) had claimed credit for (b)(7)(C) hiring in conversation with other employees, and that (b)(7)(C) was a personal friend of the (b)(7)(C), who are a married couple.

Potential violations relevant to this allegation include: 5 CFR 2635.101- Basic Obligation of Public Service, 5 CFR 2635.702- Use of Public Office for Private Gain, 5 USC § 2301- Merit System Principles, 5 USC § 2302 (b), Prohibited Personnel Practices and NRC MD 10.15- Merit Staffing Program.

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Findings

OIG did not develop any evidence that (b)(7)(C) participated inappropriately in either of the two hiring processes in question. In the case of the (b)(7)(C) position, OIG found that the division's management had identified the need for the position and written the position description. OIG found that the (b)(7)(C) had sought the assistance of (b)(7)(C) in reviewing written applications, and that (b)(7)(C) provided such assistance, consistent with applicable NRC regulations. The (b)(7)(C) made the selection of (b)(7)(C) and told OIG that (b)(7)(C) was performing well in the (b)(7)(C) position. In the case of the (b)(7)(C) position, OIG found that (b)(7)(C) did not participate in this hiring process. (b)(7)(C) was not alleged to have a covered relationship or financial connection with either (b)(7)(C) or (b)(7)(C), but rather to be a personal friend.

Basis for Findings

When interviewed, (b)(7)(C) confirmed that one of his employees was (b)(7)(C). (b)(7)(C) had been in that position since approximately July 2013. (b)(7)(C) stated that (b)(7)(C) primary duties involved (b)(7)(C).

(b)(7)(C) stated that (b)(7)(C) was "doing very well" and "meeting all the expectations." (b)(7)(C) stated that when he arrived to assume the (b)(7)(C) position, the hiring announcement for the (b)(7)(C) position was already closed. (b)(7)(C) stated that he was not involved in the drafting of the Position Description (PD) and "basically inherited it." (b)(7)(C) stated that the normal process within his (b)(7)(C) was that any new PD would go to the (b)(7)(C) first, for review in consultation with the (b)(7)(C). (b)(7)(C) identified the responsible (b)(7)(C) at the time as (b)(7)(C).

(b)(7)(C) confirmed that (b)(7)(C) was the sole rating official for the (b)(7)(C) applications, and that he himself had selected her for that function, because of her prior experience in the (b)(7)(C) and her knowledge of its work. (b)(7)(C) stated that Office of the Chief Human Capital Officer (OCHCO) rules permitted a single rating official, given that this was a GG-14 position and the number of applications received was small. (b)(7)(C) stated that consistent with normal procedure, (b)(7)(C) interfaced mainly with OCHCO, which, in turn, provided (b)(7)(C) with the best qualified list (BQL) for interviews. (b)(7)(C) stated that (b)(7)(C) was the only applicant on the BQL and the only applicant interviewed. (b)(7)(C) confirmed that it was (b)(7)(C) who made the assessments resulting in (b)(7)(C) appearance as the only individual on the BQL. (b)(7)(C) stated that he was aware that (b)(7)(C) and (b)(7)(C) had a personal friendship. However, he only learned of this after (b)(7)(C) was hired. However, he said that he did not think

this knowledge would have changed his mind in choosing her as a rating official for the position.

When interviewed, (b)(7)(C) stated that the need for the (b)(7)(C) position had been identified in approximately 2011. (b)(7)(C) stated that she herself initiated the drafting of the PD on the position, because there was then no permanent (b)(7)(C). She worked with several acting (b)(7)(C) on the PD before (b)(7)(C) took over the (b)(7)(C) permanently. (b)(7)(C) stated that it was not "unheard of," but was rare, for only one candidate to appear on a BQL and be interviewed. (b)(7)(C) stated that she was aware that the PD in question was narrow and would result in limited applications. She said that the rare combination of a fuel cycle skill set and a structural engineering skill set would naturally limit the number of potential candidates for this type of position.

OIG's review of the application package for the (b)(7)(C) position and an interview with (b)(7)(C) and a former (b)(7)(C) (b)(7)(C), confirmed that (b)(7)(C) was the only candidate, out of six total, to make the BQL, and that (b)(7)(C) was the rating official. (b)(7)(C) acknowledged a potential perception issue in the hiring process due to friendship with the (b)(7)(C). However, (b)(7)(C) also indicated that he concurred with (b)(7)(C) placement on the BQL and that he knew from conversing with (b)(7)(C) that (b)(7)(C) performance in the position had been good.

When interviewed, (b)(7)(C) Office of New Reactors, addressed the issue of (b)(7)(C) hiring as a (b)(7)(C). She identified herself as an applicant for that position, who was not selected. She stated that she had sought feedback on the application process from (b)(7)(C) (b)(7)(C) who had said that (b)(7)(C) had rotational experience as a (b)(7)(C) and had good references. (b)(7)(C) was aware that (b)(7)(C) was a (b)(7)(C) of (b)(7)(C) and had heard "rumors" that (b)(7)(C) had helped (b)(7)(C) in this hiring process, but had not heard of (b)(7)(C) claiming credit for (b)(7)(C) hiring.

When interviewed, (b)(7)(C) denied any inappropriate participation in either hiring process. (b)(7)(C) acknowledged her friendship and mentorship of both (b)(7)(C) and (b)(7)(C). Regarding (b)(7)(C) hiring, (b)(7)(C) identified (b)(7)(C) as (b)(7)(C), and stated that (b)(7)(C) had asked her to assist in the hiring for the (b)(7)(C) position by being the rating official for applications. She stated that she was aware that under an OCHCO rule, a single rating official was permissible because there were "very few applicants for the job." (b)(7)(C) denied having any role in the writing of the PD or reviewing it. (b)(7)(C) stated that her review of the crediting plan for the position showed that it was very "specific." She understood her duty in paneling the applications as following the crediting plan closely and rating applicants against it. She stated that,

for example, the plan cited international experience, and noted that (b)(7)(C) application indicated that he had attended two (b)(7)(C) (b)(7)(C), and that this set his application apart as an "A" candidate regarding the international experience element because "nobody else said it" and so they were classified as "B" candidates. She provided another example in the area of (b)(7)(C). (b)(7)(C) stated that only (b)(7)(C) cited this type of experience as well. She confirmed that of the applicants, only (b)(7)(C) was interviewed. She stated that she did, however, avoid providing any assistance to (b)(7)(C) in preparing his application because she knew she would be a reviewer on it. She stated that (b)(7)(C) did not ask for her help in any case. (b)(7)(C) stated that she did not consider the hiring of (b)(7)(C) as a matter she should recuse herself from. (b)(7)(C) also did not seek the Office of the General Counsel (OGC) advice on this matter.

With regard to (b)(7)(C) hiring as an (b)(7)(C) in November 2012, (b)(7)(C) stated that she was not involved in this "at all," but rather that the hiring was done by a team of NMSS (b)(7)(C). This was consistent with the results of an OIG review of the documentation for this hiring process. (b)(7)(C) stated that the only involvement she had had was to provide advice that (b)(7)(C) seek financial experience to prepare for such a position, and to assist (b)(7)(C) in filling out the forms to request a solicited rotation in the Office of Nuclear Regulatory Research (RES) in a (b)(7)(C) position. (b)(7)(C) stated that she helped several applicants, including (b)(7)(C), apply for three (b)(7)(C) positions. (b)(7)(C) stated that at that time she was not in (b)(7)(C) chain of command, then serving as a (b)(7)(C) in the Office of the Executive Director for Operations.

(b)(7)(C) said that on one occasion at dinner with other NRC employees, she had remarked that "I know how to get people hired, I know how to get people promotions." She stated that this did not imply favoritism but rather referenced that she was aware, as a (b)(7)(C), of how to assist and mentor employees in their professional development, by knowing what advancement junior employees sought and what other supervisors might expect. She categorized this as "coaching" and said that she viewed herself as particularly skilled at this.

OGC and OCHCO representatives interviewed by OIG indicated that a working friendship or mentoring relationship may present a potential appearance problem in hiring, but there are no rules that address this situation. It is not a prohibited relationship, and does not reach the level of misconduct, or a violation of ethics laws or regulations prohibiting nepotism, in the absence of aggravating circumstances such as a familial, romantic or cohabiting relationship. However, the OCHCO representative said it would have been in the best interest of the NRC manager to have recused him or herself from the hiring process, and the OGC representative said she would be concerned if the rating official did not mention his/her relationship with the applicant before conducting the rating for the position.

OIG briefed OGC concerning this matter. Because OIG did not develop any evidence of misconduct, it is recommended this case be closed to the files of this office.

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Distribution: (b)(7)(C)

Case File 13-51

Historical File Magnum

OIG/AIGI	(b)(7)(C)	OIG/AIGI	OIG/AIGI	(b)(7)(C)	OIG	OIG
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

April 20, 2015

MEMORANDUM TO:

(b)(7)(C)

Office of Nuclear Materials Safety
and Safeguards

FROM:

Hubert T. Bell
Hubert T. Bell

Inspector General

SUBJECT:

NOTICE OF CASE CLOSING (OIG CASE NO. 13-051)

The Office of the Inspector General has concluded an investigation of an allegation that you improperly used your position to assist two employees in obtaining promotions within NMSS.

This memorandum is to inform you that our investigation of the alleged misconduct described above is complete. Our investigation did not corroborate the alleged misconduct and the case is closed.

The purpose of this memorandum is to provide closure for you. This memorandum does not grant immunity to you for any future investigation of this allegation.

Agency management has been advised of this case closing.

If you have any questions regarding this matter, please contact (b)(7)(C)

(b)(7)(C)

at (b)(7)(C).

cc: Mark SATORIUS, EDO

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Distribution:

File Location: (b)(7)(C), (b)(7)(E)

AIGI r/f

OIG Case No. 13-051

Historical File

OIG/AIGI	OIG/AIGI	OIG/AIGI	OIG (b)(7)(C)	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
4/16/2015	4/16/15	4/16/15	4/16/15	4/16/15	4/16/15

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001



OFFICE OF THE
INSPECTOR GENERAL

April 2, 2015

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

FROM:

SUBJECT: REGION IV EMPLOYEE ALLEGED PRESSURE TO
DOWNPLAY INSPECTION FINDINGS AND RETALIATION
CAUSING A CHILLED WORK ENVIRONMENT
(OIG CASE NO. 13-052)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was based on an allegation from (b)(7)(C)

(b)(7)(C) RIV, NRC, who claimed she had been the subject of a chilled work environment as an inspector in RIV's Division of Nuclear Materials Safety (DNMS), she was experiencing pressure to downplay inspection findings, and other inspectors were considering not bringing inspection issues forward unless they were egregious. (b)(7)(C) also believed she was being retaliated against as her permanent position was to be filled while she was on a 2-year rotation to RIV's (b)(7)(C)

Potential violations relevant to this investigation include the following: No Fear Act; PL 107-174; whistleblower retaliation 8 (a); 5 USC 2302 8 (b), Prohibited Personnel Practices; and 5 CFR 2635.101, Basic Obligation of Public Service.

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Findings

OIG did not find evidence that a chilled work environment existed or that inspectors were pressured to downplay inspection findings in DNMS. OIG also did not find any evidence of retaliation against (b)(7)(C) in this case. OIG determined, however, there was a strained professional relationship between two DNMS (b)(7)(C) (b)(7)(C) and their disagreements had an impact on the work of several DNMS employees.

Basis of Findings

Interview of the Allegor

OIG interviewed (b)(7)(C) who was then on a rotational assignment as an (b)(7)(C) at NRC Region IV. Prior to the assignment, she served as a (b)(7)(C) in DNMS (b)(7)(C) RIV.

(b)(7)(C) conducted two inspections at the Lovelace Respiratory Research Institute (LRRI) after a former LRRI employee made allegations concerning LRRI's safety procedures. After returning from an inspection, (b)(7)(C) raised multiple issues that she believed constituted license violations. However, she told OIG that her findings led to a differing of opinions at NRC RIV between the (b)(7)(C) for (b)(7)(C) (b)(7)(C). For example, (b)(7)(C) told OIG that LRRI had a license condition that required them to have a bioassay program for workers. The RIV inspection found LRRI did not have an internal dosimetry or any other bioassay program and accordingly wrote it up as a proposed violation of a license condition. However, (b)(7)(C) disagreed with the inspection report and thought the license condition was vague, and the proposed violation was downgraded to an unresolved item. According to (b)(7)(C) several other proposed violations led to additional disagreements between (b)(7)(C) and (b)(7)(C).

(b)(7)(C) thought the NRC RIV issued LRRI a poorly written license and believed the license led to many of the disputes identified. She did not know if DNMS considered issuing a new license to address the proposed findings/violations that did not make it into the final report. (b)(7)(C) did not believe DNMS violated any policies or laws and stated, "I can live with what we did. I don't think we covered everything, but I can live with it."

At the time of their inspection and subsequent report, (b)(7)(C) told OIG she did not think she was being chilled, and viewed it as a long and hard fight to keep the proposed violations against LRRI. In subsequent discussions with RIV's Office of Investigations (OI), an OI investigator told her that it sounded like a chilled work environment. (b)(7)(C) also told OIG that she may be the subject of

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retaliation, as DNMS management intended to fill her permanent position while she was on temporary rotation.

Interview of Region IV Employees

Interview of (b)(7)(C) Region IV

(b)(7)(C) accompanied (b)(7)(C) on an inspection of LRRI. (b)(7)(C) stated (b)(7)(C) and (b)(7)(C) disagreed on many of the proposed violations, and the inspection report was delayed because of these disagreements. (b)(7)(C) helped revise the inspection report, and remembered that a proposed violation concerning the inexperience of LRRI's (b)(7)(C) was the only thing that was totally removed from the report. When asked about (b)(7)(C) stated she always felt comfortable bringing concerns to his attention.

Interview of (b)(7)(C) Region IV

(b)(7)(C) told OIG that she had previously served in (b)(7)(C) before transferring to (b)(7)(C). She believed the LRRI inspection was contentious because of a communication breakdown between the branches. When asked about (b)(7)(C) (b)(7)(C) said he was one of the best supervisors she had worked with in the NRC. (b)(7)(C) stated (b)(7)(C) communicates well and trusts his staff's work. She believed the conflict between the branches led to a chilled work environment. However, she could not provide any specific examples on how she had been chilled in any way.

Interview of Region IV, Office of Investigations, (b)(7)(C)

(b)(7)(C)

OIG interviewed (b)(7)(C), (b)(7)(C) OI, Region IV, regarding the LRRI inspection and his knowledge of (b)(7)(C) experience with the inspection. (b)(7)(C) told OIG he discussed the allegations surrounding the LRRI inspections with (b)(7)(C). During that discussion, she told (b)(7)(C) about the difficulties in moving the LRRI report forward. (b)(7)(C) told her she might have experienced a chilled work environment. (b)(7)(C) believed she had been unfairly criticized for bringing an allegation forward in April 2013 to the Allegation Review Board (ARB) concerning LRRI's former (b)(7)(C) being unqualified for his position. (b)(7)(C) told OIG that the allegation was delayed in being addressed by the ARB because (b)(7)(C) wanted a detailed analysis. The allegation was brought to the ARB on August 5, 2013, where it was decided that OI would open and assist to staff case. Based on the information received during this assist case, the ARB examined the allegation again in September 2013, at which time a full OI investigation was authorized.

Interview of (b)(7)(C) Former DNMS (b)(7)(C)

(b)(7)(C) told OIG that she had been the DNMS (b)(7)(C) for several years and had previously served as the (b)(7)(C). (b)(7)(C) stated that DNMS management took action when she found out (b)(7)(C) and (b)(7)(C) were attacking each other professionally over whether a violation could be levied against LRRI. (b)(7)(C) described (b)(7)(C) DNMS' (b)(7)(C) as being abrupt in his dealings and seemed to do "drive-by" briefings. (b)(7)(C) also told OIG that (b)(7)(C) (b)(7)(C) could sometimes get emotional during disagreements. (b)(7)(C) stated that DNMS' management was aware of the branch chiefs' relationship, and was actively working on improving their communication with each other.

Interview of (b)(7)(C)

(b)(7)(C) told OIG that as (b)(7)(C) she often advises RIV staff regarding inspections and OI investigations. (b)(7)(C) remembered there was a difference of opinion regarding which violations could be levied against LRRI. (b)(7)(C) told OIG that one of the ARB meetings became contentious, mainly because of personalities of certain staff. (b)(7)(C) described (b)(7)(C) as expressing himself very "passionately." (b)(7)(C) did not believe that the meeting was unprofessional, but that it was intense. (b)(7)(C) believed that the LRRI investigation stands out in her mind because after the September 2013 ARB meeting, (b)(7)(C) discussed with the board the difficulties in this case being moved forward. (b)(7)(C) described (b)(7)(C) discussion as collegial, although he believed that there was unnecessary delay in the case and that (b)(7)(C) had been right all along.

Interview of (b)(7)(C) Region IV (b)(7)(C)

(b)(7)(C) told OIG that the 2-year rotational positions created in (b)(7)(C) are meant to broaden the professional development of staff at RIV. (b)(7)(C) stated that (b)(7)(C) (b)(7)(C) is currently in such a position, and she would be rotating back to the DNMS in May 2015. Although the rotational assignment is temporary, (b)(7)(C) told OIG that (b)(7)(C) retained her permanent tenure in DNMS.

Interview of (b)(7)(C) Region IV

OIG interviewed (b)(7)(C) concerning his duties as (b)(7)(C) of DNMS' (b)(7)(C) and his role in the LRRI inspection. (b)(7)(C) stated that (b)(7)(C) and two other DNMS employees conducted an inspection after RIV received an allegation concerning LRRI. Some of the allegations originally focused on the then-current (b)(7)(C) not being qualified for his position. (b)(7)(C) told OIG that he had a conflict with (b)(7)(C) regarding whether LRRI's (b)(7)(C) was qualified. (b)(7)(C) reviewed the guidance, and determined the (b)(7)(C) was qualified. (b)(7)(C) viewed this difference as a problem with the guidance.

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(b)(7)(C) told OIG that LRRI also did not comply with a license condition that required a bioassay program. However, after the license was issued, LRRI wrote implementing procedures that allowed the lab to skirt the bioassay program. (b)(7)(C) stated that he came into conflict with (b)(7)(C) over whether the lack of a bioassay program constituted a violation based on LRRI's procedures. (b)(7)(C) stated that this issue eventually had to be resolved with assistance from the (b)(7)(C) and the Office of the General Counsel. LRRI was cited for a violation for not following the bioassay program. Since LRRI was not following the bioassay program, there was no way of knowing if employees had been overexposed. RIV added an unresolved item to the inspection report requiring LRRI to conduct an evaluation to determine if employees had been exposed to amounts greater than the annual intake limit. A formal evaluation was conducted by a contractor and it was determined there was no evidence suggesting any employee was overexposed.

According to (b)(7)(C) during the October 2011 inspection report editing process, (b)(7)(C) told him that part of the problem was LRRI's license was not specific enough to enforce. (b)(7)(C) opined LRRI's license was "horribly" written and required RIV to be innovative with its citations from an enforcement perspective. (b)(7)(C) proposed that RIV assist LRRI in improving and resubmitting its procedures as license amendments. The license amendments would tie the procedures to the license, thus making them enforceable. This undertaking was accomplished. LRRI submitted licensing amendments that were approved by NRC RIV that tied their procedures back to the license for enforceability.

(b)(7)(C) stated that eventually (b)(7)(C) and he were in "open warfare" during meetings. (b)(7)(C) told OIG that at that point, DNMS management intervened. (b)(7)(C) told OIG he tried to keep (b)(7)(C) involved in the inspection report drafting process. (b)(7)(C) stated (b)(7)(C) did not bring any specific chilled work environment concerns to him. However, (b)(7)(C) believed there was a spill-over effect which affected the staff's work. (b)(7)(C) stated some of his staff raised concerns over (b)(7)(C) behavior, but they were still able to come to (b)(7)(C) regarding safety concerns.

Interview of (b)(7)(C) Region IV

OIG interviewed (b)(7)(C) concerning his duties as (b)(7)(C) of DNMS (b)(7)(C) and his role in the LRRI inspection. (b)(7)(C) stated the inspection indicated that there were problems at LRRI with the Radiation Safety Committee (RSC). (b)(7)(C) stated that he, (b)(7)(C) and others engaged LRRI to strengthen its safety procedures. NRC also told LRRI that it would need to refresh its license. (b)(7)(C) stated the inspection also led to several violations for LRRI. There was a lot of internal discussion within the NRC, mainly because the inspectors were drafting proposed violations that were not tied back to the license. This internal discussion led to the LRRI inspection report being delayed by nearly 6 months. (b)(7)(C) refuted some of the

proposed violations, and was concerned that the NRC may be embarrassed if the licensee refuted the violations. At the end of these discussions, the NRC levied five violations on LRRI.

(b)(7)(C) agreed that (b)(7)(C) proposed findings and violations were of concern from a health physics viewpoint. This led to RIV establishing a committee of five or six inspectors and licensing reviewers to review and compare LRRI's procedures to the concerns RIV had but could not cite during the inspections. According to (b)(7)(C) the committee "tightened up their processes." LRRI submitted licensing amendments that were approved by NRC RIV that tied their procedures back to the license for enforceability.

(b)(7)(C) described his relationship with (b)(7)(C) as having communication problems. (b)(7)(C) stated that at times, (b)(7)(C) tries to preempt his staff's work. (b)(7)(C) stated some of his staff had complained about being directed by (b)(7)(C) in their work. (b)(7)(C) stated that his conflict with (b)(7)(C) led to several conversations between the two of them that were directed and guided by (b)(7)(C). (b)(7)(C) denied any knowledge that his subordinates or anyone else felt uncomfortable bring safety/security concerns to either himself or (b)(7)(C).

Although OIG found that there was a strained professional relationship between DNMS (b)(7)(C) OIG did not find evidence of a chilled work environment or DNMS inspectors being pressured to downplay inspection findings. Additionally, OIG did not find any evidence of retaliation against (b)(7)(C). Accordingly, it is recommended that this case be closed to the files of this office.

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(b)(7)(E)

Distribution

Case File 13-52

Historical File

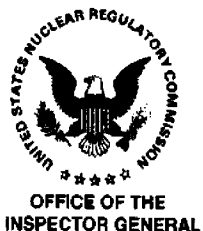
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(b)(7)(C)			OIG	OIG	OIG
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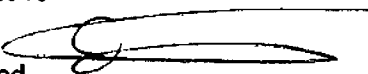
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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

September 22, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)
Team Leader (b)(7)(C)
(b)(7)(C)
Special Agent (b)(7)(C)

FROM:

SUBJECT:

NRC MANAGEMENT DIRECTED STAFF NOT TO ISSUE
REQUEST FOR INFORMATION PERTAINING TO
FINANCIAL ASSURANCE FOR OPERATION COSTS
(OIG CASE NO. 14-011)

Allegation

The Office of the Inspector General (OIG), Nuclear Regulatory Commission (NRC), conducted this investigation in response to a November 14, 2013, allegation from U.S. Senators Edward Markey and Bernard Sanders that on June 5, 2013, NRC Office of Nuclear Reactor Regulation (NRR) technical staff were prevented from issuing a Request for Additional Information (RAI) to Entergy, an NRC licensee, in connection with the financial condition of its nuclear plants (Pilgrim Nuclear Power Station in Massachusetts, Vermont Yankee in Vermont, Indian Point Energy Center and the James A. Fitzpatrick Nuclear Power Plant in New York, and Palisades Plant in Michigan). In addition, it was alleged that the same NRC staff were directed to refrain from issuing financial RAIs to any licensee that is currently subjected to additional safety oversight because of safety problems at the reactors.

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It was also alleged that this direction to staff (refrain from issuing financial RAIs) was contrary to direction provided by then-NRC Chairman Allison MACFARLANE to issue the RAIs and that (b)(7)(C) NRR, (b)(7)(C) (b)(7)(C), disagreed and said that the Chairman “is only one Commissioner.”

Potential violation relevant to this allegation is 5 CFR 2635.101 – Basic Obligation of Public Service.

Findings

OIG could not substantiate impropriety in NRR’s direction to staff not to issue financial related RAIs to licensees, or that Entergy, an NRC licensee, improperly influenced NRR to make that decision.

OIG found that on June 6, 2013, NRR (b)(7)(C), with support from his managers, directed NRR staff to refrain from issuing financial RAIs until the process for issuing this type of request could be better defined and documented. OIG learned that most RAIs are issued by NRC when the staff is reviewing proposed licensing actions and needs additional information from the licensee to make a decision, and that there is a well-defined process for licensing-related RAIs. However, the financial RAIs that were halted by the NRR (b)(7)(C) were unrelated to any licensing action, and it was not clear to the (b)(7)(C) or his managers what would be done with responses from the licensee. OIG also learned that NRR issued two financial RAIs in the 3 months preceding the decision to postpone further RAIs; however, these were not reviewed by the NRR (b)(7)(C), who had been on rotation at the time. OIG further determined that although an Entergy representative telephoned the (b)(7)(C) manager on July 6, 2013, to express a concern about a draft RAI and request a “drop-in” meeting on June 11, 2013, to discuss the matter, the (b)(7)(C) had documented his concerns clearly and shared them with his managers prior to this contact.

Although the decision to put the RAIs on hold was made after the phone call, and NRC managers recognized the licensee was questioning the process for the financial RAIs and the potential impact on their operations, the managers maintained that their decision to halt the RAIs was not improperly influenced by licensee pressure. Rather, they halted the RAIs after the phone call due to their own concerns about the lack of process, and the “drop-in” meeting did not impact that decision.

OIG found that in March 2015, NRC finalized guidance to staff describing NRC’s authority for requesting financial information from licensees and various process aspects, including criteria to determine whether RAIs should be issued, criteria for

evaluating information provided by licensee, and closeout and disposition following staff analysis of licensee responses to financial RAIs. It wasn't until July 2016 that NRR staff evaluated the 2013 RAIs using the new guidance and concluded no further action was required on the RAIs, which are now considered closed by the staff. This information was received July 8, 2016, pursuant to OIG continuous request for finalization by NRR of the issue.

OIG found that former NRC-Chairman MACFARLANE did not recall making a statement to staff to issue the RAIs and that she was aware such direction would have needed to come from the Commission.

Basis of Findings

Background

Decommissioning is the safe removal of a nuclear facility from service and the reduction of residual radioactivity to a level that permits release of the property and termination of the license. NRC rules establish site-release criteria and provide for unrestricted and, under certain conditions, restricted release of a site. NRC also requires all licensees to maintain financial assurance that funds will be available when needed for decommissioning.

Each nuclear power plant licensee must report to the NRC every 2 years the status of its decommissioning funding for each reactor or share of a reactor that it owns. The report must estimate the minimum amount needed for decommissioning by using the formulas found in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning." Licensees may alternatively determine a site-specific funding estimate, provided that amount is greater than the generic decommissioning estimate. NRC staff perform an independent analysis of each of these reports to determine whether licensees are providing reasonable "decommissioning funding assurance" for radiological decommissioning of the reactor at the permanent termination of operation.

Per 10 CFR 50.33(f)(5), NRC may request that a currently operating reactor licensee provide information regarding its financial arrangements and status of funds. Specifically, the Commission may request an established entity or newly-formed entity to submit additional or more detailed information regarding its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

Consistent with NRC staff guidance in NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NRC does not systematically conduct ongoing reviews of financial qualifications or financial conditions of licensees. However, NRC staff conduct ongoing reviews of all licensees by screening trade papers, industry newsletters, and various public sources for business, finance, and economic news to determine whether there is a need for additional information.

One method available to NRC for seeking information from licensees is through an RAI. RAIs are typically issued by NRC when the staff is reviewing proposed licensing actions and needs additional information from the applicant. According to an NRR Handbook, the need for additional information relative to a particular licensing action or activity may be identified by the project manager (PM), but generally such a need is identified by the technical branch reviewer. In the latter case, the technical branch reviewer prepares the questions seeking the information and forwards the questions by memorandum to the PM. The PM reviews the questions and discusses any proposed modifications with the originator. The PM then prepares a letter to the affected organization with instructions for responding. The NRR Handbook notes that it may be helpful to discuss the pending RAI with the organization prior to forwarding the letter to settle on a mutually agreeable response schedule.

Chronology

On March 20, 2013, NRC issued an RAI to Entergy pertaining to information provided on Entergy's quarterly 10-K¹ Securities and Exchange Commission (SEC) filing about its Vermont Yankee Nuclear Power Plant. The RAI asked the licensee to provide more detailed information to support NRC's financial qualification review. The RAI had been drafted by (b)(7)(C). OIG learned that in addition to drafting the RAI, (b)(7)(C) concurred on the draft as acting (b)(7)(C).

(b)(7)(C) provided the draft RAI to (b)(7)(C), the NRR (b)(7)(C) with responsibility for matters pertaining to Vermont Yankee, and (b)(7)(C) coordinated with the plant (per process) by letting the plant know in advance the RAI would be coming and asking them to contact NRC if they had any concerns.

On April 4, 2013, NRC issued an RAI to Luminant Generation Company, LLC, with questions pertaining to information provided on the company's annual 10-K SEC filing

¹ The annual report on Form 10-K provides a comprehensive overview of the company's business and financial condition and includes audited financial statements. After it is filed, 10-K information is made available via the SEC Web site.

with regard to the Comanche Peak Nuclear Power Plant. The RAI was drafted by (b)(7)(C) and provided to (b)(7)(C) the NRR (b)(7)(C) responsible for coordinating with Comanche Peak. This time, (b)(7)(C), as acting (b)(7)(C) (b)(7)(C), concurred on the draft.

On May 2, 2013, Luminant provided its response to NRC pertaining to Comanche Peak and the response discussed the company's internal restructuring of Energy Future Holdings Corporation. After reviewing this response, (b)(7)(C) communicated with Region IV and a "focus inspection" was conducted at the plant to determine if financial issues created safety problems. The inspection determined everything was in alignment at the plant. (b)(7)(C) wrote a safety evaluation and a closeout letter was sent to the licensee on January 28, 2014.

On May 6, 2013, Entergy responded to its RAI with financial projections for the next 5 years. After reviewing this information, (b)(7)(C) was concerned about the financial data and its potential impact on other Entergy plants so she prepared a followup RAI and requested approval from (b)(7)(C).

On May 31, 2013, (b)(7)(C) sent a detailed email to (b)(7)(C), and (b)(7)(C) (b)(7)(C) discussing financial qualifications for operating reactors. Specifically, the email, which was courtesy copied to (b)(7)(C) and other staff members, conveyed that (b)(7)(C) supported the RAIs, but questioned the process for issuing RAIs outside of a licensing action and how to handle the response from the licensee. (b)(7)(C) wrote,

I challenged the staff on what process would apply to this kind of review. (After RAI issuance what is the next step? How are we documenting the technical review given there is no inspection report or licensing action in front of the Commission? What are we producing – an SER? What do we do if we do not agree with the licensees' current situation? What is the criteria for determining financial qualification – the "line in the sand" as it were?) There does not appear to be a documented process for this kind of activity....

On June 5, 2013, (b)(7)(C) provided the draft RAI to (b)(7)(C) who had responsibility for matters pertaining to Vermont Yankee and other Entergy plants. This time, however, after (b)(7)(C) informed Entergy about the draft RAI, the licensee contacted (b)(7)(C) and (b)(7)(C) on June 6, 2013, to express a concern and requested to speak with them about this matter in person the following week because they were already planning to visit NRC that week about a different matter. [Investigative Note: The version of this draft RAI that OIG reviewed did not include any concurrences.]

On June 6, 2013, (b)(7)(C) sent an email to (b)(7)(C) and (b)(7)(C) staff concerning the disposition and issuance of RAIs regarding financial qualifications. The email stated, "in seeking clarity on the most applicable process in which we will ultimately disposition the issues associated with the proposed RAIs and to ensure alignment with (b)(7)(C) management (also (b)(7)(C) management) and the path forward, I am requesting that you hold the proposed RAIs for now."

On June 11, 2013, Entergy representative (b)(7)(C) visited NRC headquarters and met with (b)(7)(C) and (b)(7)(C) to convey his company's concerns that the followup RAI would have a negative impact on the company.

The hold on financial RAIs continued within NRR as (b)(7)(C) (b)(7)(C) worked to develop a policy concerning the use of RAIs for financial information requests.

In March 2015, NRR issued "Interim Staff Guidance – Reviewing and Assessing the Financial Condition of Operating Power Reactor Licensees, including Requests for Additional Information" to clarify NRC's process for reviewing financial conditions of, and financial concerns about, currently operating power reactor licensees. According to the document, this interim staff guidance (ISG) is intended to supplement NRC financial review guidance in NUREG-1577. The ISG describes NRC's authority for requesting financial information from licensees, states that RAIs may be used for this purpose, and defines the process for internal review. The ISG addresses

- A. Level of review – identifying initial issues of concern and confirming accuracy of preliminary sources of information.
- B. Criteria to determine whether RAIs should be issued per 10 CFR 50.33(f)(5) – analysis of preliminary source information.
- C. Staff peer review and management review.
- D. Information to be requested by staff.
- E. Staff analysis – criteria for evaluating information provided by licensees.
- F. Closeout and disposition following staff analysis of licensee response to RAIs.

In July 2016, NRR provided OIG with the results of its assessment of four sets of financial RAIs that were generated during the 2013 timeframe. One set of RAIs had been transmitted to the licensee (Vermont-Yankee) and three sets (Entergy, Duane Arnold, and Exelon) were not transmitted. According to (b)(7)(C), the staff analyzed the four sets of RAIs using the March 2015 ISG and concluded that no further action was required relative to any of the four sets of RAIs.

NRC's analysis, "Disposition of RAIs Generated by Staff in 2013 – Financial Status of Licensees," dated July 5, 2016, describes the basis underlying each set of RAIs and the rationale (i.e., ISG criteria) for concluding no further action was warranted, noting for each set of RAIs "there exists no requirement to meet [financial qualification] requirements" and "the potential for significant, long-term chronic impacts to revenue, net income, or other sources of funds" could not be assumed or derived from the information used as the basis for the RAI.

Interviews

(b)(7)(C) told OIG that after reviewing Entergy's 10-K filings with the SEC, she learned there was an impairment listed for Vermont Yankee. (b)(7)(C) stated that the impairment ("the plant was not producing enough cash flow to cover its operational cost") raised questions as to whether Entergy was meeting the financial qualification requirement, so she decided to draft an RAI to Vermont Yankee, which was issued to the licensee on March 20, 2013. (b)(7)(C) stated that Entergy responded May 2013 with its financial projections, which revealed poor results. (b)(7)(C) developed a followup RAI for Entergy covering multiple plants because she believed other Entergy plants could have been impacted. [Investigative Note: OIG reviewed the RAI, which cited as its rationale (1) information published by the Energy Information Administration on January 9, 2012, describing a decline in wholesale energy prices, and (2) information from an Entergy SEC 10-Q² statement describing the impact of the economic downturn and negative trends in the energy commodity markets.]

On June 5, 2013, (b)(7)(C) provided the draft RAI to (b)(7)(C), who was responsible for matters pertaining to Vermont Yankee and other Entergy plants. She said that typically (b)(7)(C) would contact the licensee to alert them of a forthcoming RAI. However, (b)(7)(C) claimed that before the draft RAI was issued, a representative from Entergy contacted NRC management to question the RAI. (b)(7)(C) stated that the following day, (b)(7)(C) sent an email to the staff to place the RAIs on hold.

(b)(7)(C) said she was told the RAI had not been issued because the process for issuing RAIs was unclear and she did not have a good basis for issuing the RAIs.

Both (b)(7)(C) and (b)(7)(C) told OIG that (b)(7)(C) RAIs did not originate via the usual process. Typically, RAIs come through the division as part of a license amendment request from the licensee. Usually a licensing action is submitted by the licensee and NRC issues RAIs in response. In these instances, however, there was not an actual licensing action or amendment sent from the licensee; instead, NRC's

² The SEC form 10-Q is a comprehensive report of a company's performance that must be submitted quarterly by all public companies to the SEC.

financial review group initiated its own review. The PMs said that it is common practice for PMs to contact the licensee by telephone or email before a formal RAI is issued “just to ensure that the licensee understand[s] what the questions are and minimize rework.” If the licensee does not need further clarification, the RAI is issued formally, requesting the licensee to respond, typically within 30 days.

(b)(7)(C) said when he received the draft RAI for the other Entergy plants, he intended to handle it in the same manner as he had for the Vermont Yankee RAI, but (b)(7)(C) sent an email instructing (b)(7)(C) staff to hold off on sending RAIs to the licensee. (b)(7)(C) stated (b)(7)(C) wanted to “understand our process, understand what we’re asking, understand the outcome, and the expected outcome” of issuing the RAIs outside of a licensing action.

(b)(7)(C) told OIG that in the course of doing business, financial analysts keep informed about the industry by monitoring public information such as newspapers and industry newsletters. By doing this, the financial analysts are able to verify the accuracy of the information and also determine if the information could potentially harm a licensee’s “ability to either build, operate or eventually decommission a plant because the licensee should have the financial resources.” (b)(7)(C) explained that it is rare for financial analysts to ask a question outside of a licensing action and said that in his (b)(7)(C) at NRC, he may have “done that twice maybe, if that many times, where we simply saw something in the paper, asked a question and get an answer.”

(b)(7)(C) said that he was on a 90-day rotation from January 2013 to April 2013 as the (b)(7)(C) when he concurred on RAIs. He could not recall the specifics of the RAIs, but said he spoke to (b)(7)(C) to get a better understanding and felt (b)(7)(C) reasoning was acceptable. (b)(7)(C) was unsure why he did not concur on the RAI issued to Vermont Yankee on March 20, 2013, which showed (b)(7)(C) concurred as the acting (b)(7)(C) on March 18, 2013. (b)(7)(C) said he may have been out of the office and (b)(7)(C) may have been acting.

(b)(7)(C) told OIG that (b)(7)(C) called him and told him that the staff was considering issuing RAIs for Fitzpatrick, Indian Point, and Pilgrim. (b)(7)(C) did not voice his concerns to (b)(7)(C) but spoke to his management, including (b)(7)(C) for all of Entergy, concerning the RAI for the Entergy plants and questioning the basis for the RAI. (b)(7)(C) did not recall receiving a copy of the draft RAI from (b)(7)(C) but said that there were concerns with the draft RAI, if received, because if other merchant fleets in the industry were not receiving a

similar RAI on the same day with the same wording, there could be a “significant unintended consequence.”

(b)(7)(C) contacted (b)(7)(C) and (b)(7)(C) on June 6, 2013, to voice his concerns. (b)(7)(C) told (b)(7)(C) that he would be at the NRC and requested a “drop-in” meeting to discuss the draft RAI. On June 11, 2013, (b)(7)(C) met with (b)(7)(C) and another staff member for approximately 15 to 20 minutes. During the meeting, (b)(7)(C) said he reiterated the concerns and discussed the decommissioning trust process, which is a clear and established process when submitting financial information. However, (b)(7)(C) believed that Entergy was being singled out and the nature of the questions were not being driven by process because typically Entergy would have something before the agency (e.g., a license amendment or relief request) for an RAI to be issued. (b)(7)(C) said the meeting was very short and there was no indication of a disposition, and there was no further communication on the matter after the meeting. Although he did not try to persuade the NRC from issuing the RAIs, he felt he influenced the staff to better understand where the concern was coming from and why.

(b)(7)(C) told OIG that normally when the agency “asks a question, an RAI, it’s usually in the context of a licensing action put before the Commission.” He said the licensees come to the Commission and then request NRC to take an action (e.g., issue an amendment, issue a license, request for an exemption). In the process of reviewing that application, NRC may have the need for more information, and uses an RAI to ask the question. In this case, he said, there was no licensing action before the Commission. Instead, the staff had a concern and wanted to ask the licensee for information to help disposition this concern. It was unclear to (b)(7)(C) what NRC would do with the response because there was no license to be issued or safety evaluation report to come of it. (b)(7)(C) said, “It was very unclear what the process was for dealing with this because it was out of the norm.”

(b)(7)(C) said the RAI questions were developed when he was on rotation, but (b)(7)(C) requested approval to send the RAI to the licensee after (b)(7)(C) returned. (b)(7)(C) believed that the questions were reasonable, but was concerned about the process. Nevertheless, he said he concurred on the draft RAI and it was forwarded to (b)(7)(C) the licensing organization who, in turn, contacted the licensee to inform them of the draft RAI.

According to (b)(7)(C) after (b)(7)(C) spoke to NRR management and questioned the regulatory basis for the draft RAI, a decision was made by (b)(7)(C) and (b)(7)(C) to put a hold on all draft RAIs that were developed to address the process-related concerns (e.g., What process are we in? What is the regulatory basis?) before the questions are issued to the licensee. (b)(7)(C) sent an email to (b)(7)(C) as well as the NRR staff to put

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a hold on the draft RAIs for the moment. The following week, (b)(7)(C) had a drop-in meeting with (b)(7)(C) for approximately 10-15 minutes to discuss his concerns.

(b)(7)(C) told OIG that (b)(7)(C) sent a detailed email on May 31, 2013, to him and (b)(7)(C) that discussed a set of RAIs that were being developed for Entergy as well as other facilities. (b)(7)(C) stated (b)(7)(C) was concerned with the process, basis, and overall handling of the RAIs. (b)(7)(C) said (b)(7)(C) wanted to pause before issuing the RAIs to figure out a process for this type of RAI. (b)(7)(C) said he agreed with (b)(7)(C) approach.

(b)(7)(C) said (b)(7)(C) requested a meeting with (b)(7)(C) and (b)(7)(C) a week after the RAIs were placed on hold. (b)(7)(C) recalled that (b)(7)(C) told (b)(7)(C) that if an appropriate question needed to be asked, it would be asked. (b)(7)(C) said while there could have been an appearance that (b)(7)(C) was trying to influence the staff not to issue the RAIs, the meeting did not influence his decision to put the draft RAIs on hold.

(b)(7)(C) said that interim staff guidance was generated as a part of the initiative to better clarify and implement the process. He said the RAIs that were placed on hold would be reviewed using the newly developed process and a determination will be made as to whether or not to issue the RAIs.

(b)(7)(C) told OIG that he learned of the RAIs when he received a call from (b)(7)(C) who wanted to discuss the RAIs with NRR management because he had some questions and concerns. Prior to that phone call, (b)(7)(C) said he had not seen the RAIs developed for Entergy.

(b)(7)(C) said during the meeting, he and (b)(7)(C) listened to (b)(7)(C) concerns about the RAIs and the possible impacts of these RAIs on the company's stock prices as well as how shareholders may perceive what was going on with the company and/or the general market impact. (b)(7)(C) told (b)(7)(C) that although he was mindful of (b)(7)(C) concerns, they were not of primary concern to NRC. He said that if the staff identified a safety issue with their facility or an issue with their licensing basis, the RAIs would be sent. (b)(7)(C) told (b)(7)(C) he would review the RAIs and go from there. (b)(7)(C) indicated that at no time during the meeting with (b)(7)(C) did he feel he was being influenced not to issue the RAIs to Energy.

After the meeting with (b)(7)(C) said that he met with (b)(7)(C) and (b)(7)(C) to review the draft RAI to Entergy to determine what was being asked. Based on their review, it appeared that the RAI was general in nature because it referenced a Department of Energy Web site link to a report that discussed declining energy prices

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across the country. (b)(7)(C) said that the review prompted questions about the process for issuing the RAIs outside of a licensing action.

(b)(7)(C) said the regulatory basis for issuing the RAIs was not clear and he believed that until the staff could document a clear basis of what was being asked, how that information was going to be used, and the connection to safety, the RAIs should be placed on hold. (b)(7)(C) said that the regulation (NUREG-1577) "is not precisely defined as some other areas in our regulatory framework."

(b)(7)(C) told OIG that the current process for issuing RAIs outside of a licensing action is ad hoc, and he requested that the staff develop a process, implement through interim guidance, make revision to the NUREG, and put it out for public comment to receive feedback.

(b)(7)(C) said the decision to place the RAIs on hold was made by (b)(7)(C) and (b)(7)(C) with his support and agreement.

Former NRC-Chairman MACFARLANE told OIG that on December 19, 2013, NRR (b)(7)(C) staff met with her to discuss financial qualifications of nuclear power plants. She did not recall making a statement that the staff should look into the Entergy situation and should issue the RAIs, but she said the staff may have interpreted her questioning of the RAIs as giving direction to issue the RAIs to Entergy. MACFARLANE indicated that she could not give the staff direction to issue RAIs because giving direction to the staff is accomplished through a formal process with the consensus of the other Commissioners. MACFARLANE stated that she could only give the staff direction concerning personnel issues (i.e., training) and/or reorganization issues.

(b)(7)(C) an attendee at the briefing, said that he may have stated to a staff member that the Chairman "is only one Commissioner." (b)(7)(C) could not remember his exact statement to any staff member, but he acknowledged that the former Chairman could not give the staff instruction without a Staff Requirements Memorandum, which the staff never received.

(b)(7)(C) told OIG that (b)(7)(C) tasked him in the May/June 2013 timeframe to develop and clarify a process for issuing RAIs outside of a licensing action. (b)(7)(C) indicated that the process was developed throughout 2014 and the final document was published for transmittal in the Federal Register March 2015 in the form of an ISG. According to (b)(7)(C) the process provides a roadmap for staff to determine if an RAI is warranted under 10 CFR 50.33(f)(5). (b)(7)(C) told OIG that the process will determine if an RAI

should be developed, the criteria used by staff, the questions that would be asked, how the information would be evaluated, and what staff would do with the information.

(b)(7)(C) provided OIG with "Disposition of RAIs Generated by Staff in 2013 – Financial Status of Licensees," dated July 5, 2016, which assessed four sets of RAIs drafted by staff between March and June 2013. The assessment reflected the outcome of the staff's application of the ISG, concluding that no further action was needed with regard to any of the RAIs.

Because OIG could not substantiate that the NRC staff was inappropriately influenced to halt the June 2013 draft RAI, and the staff has developed a process through an ISG when issuing RAIs outside of a licensing action, it is recommended that the case be closed to the files of this office.

Distribution:
Case File 14-011

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OIG (b)(7)(C)	OIG (b)(7)(C)	(b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG	OIG
				J. McMillan	D. Lee	H. Bell
09/06/16	9/6/16	9/8/16	9/7/16	9/14/16	9/22/16	9/23/16

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INSPECTOR GENERAL

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 15, 2015

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, (b)(7)(C)

For.

SUBJECT:

UNUSUAL BANK TRANSACTIONS PERTAINING TO AN
NRC EMPLOYEE (OIG CASE NO. 15-003)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), reviewed an investigative referral from (b)(7)(C) (b)(7)(C) Washington Field Office (WFO), Office of Special Inspector General for the Troubled Asset Relief Program (SIGTARP), U.S. Treasury, alerting OIG to unusual cash activities linked to a joint bank account held by (b)(7)(C) (b)(7)(C) (b)(7)(C) Office of the Chief Financial Officer (OCFO), NRC, and his wife.

According to the report, between January 13, 2014, and August 4, 2014, there were 35 cash deposits totaling \$41,050 registered to (b)(7)(C) joint bank account. In addition, account records associated to (b)(7)(C) also reflected 135 cash withdrawals at Automatic Teller Machines (ATM's), bank branches, and casinos for a total of \$58,190--in amounts that varied between \$20 and \$2,000.

Per the monitoring parameters observed by SIGTARP, the aforementioned transactions appeared to be suspicious because no source of funds for the transactions previously described were definitely identified.

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OIG reviewed the SIGTARP's reporting data to (1) determine the identity, and source(s) of the funds used to conduct the suspicious cash deposits and withdrawals associated to (b)(7)(C) and (2) verify if those transactions were part of a criminal scheme furthered by (b)(7)(C) unauthorized appropriation of NRC funds or access to the non-public financial information.

Potential violations relevant to this allegation are Title 18 of the U.S. Code Sections (§) 1956, Money Laundering; § 1003, Demands Against the United States, and § 1344, Bank Fraud.

Findings

OIG found that (b)(7)(C) gambles at Maryland casinos multiple times each week and routinely makes bank withdrawals and deposits in connection with his and his wife's gambling habits. OIG did not identify any evidence to suggest criminal misconduct in connection with these money transactions or gambling, and determined that (b)(7)(C) position at the OCFO, NRC, does not give him access to financial information or funds.

OIG determined that (b)(7)(C) funding of his gambling activities associated with the suspected financial transactions originated from (1) insurance money issued as a result of a fire that occurred in his former residence in or about summer of 2013, (2) profits from the sale of the aforementioned home after reconstruction, and (3) gambling earnings collected between 2013 and 2014.

OIG briefed NRC Personnel Security Branch (PSB) on the results of this investigation.

Basis of Findings

Per SIGTARP's referral, between January 13, 2014, and August 4, 2014—approximately an 8-month period—\$41,050 was deposited in (b)(7)(C) account via 35 cash deposits made in amounts that varied between \$20 and \$3,150, and 135 cash withdrawals made via ATM's, branches and casinos—totaling \$58,190.10. The source(s) of these transactions could not be identified with the investigative data at hand. As a result, SIGTARP shared the information with OIG for further investigative action because the identified account holder was an NRC employee.

In response to the above, OIG conducted electronic records queries; reviewed NRC records; and conducted two interviews, including one of the subject pertaining to his source of income.

Records Review

On October 27, 2014, OIG in coordination with (b)(7)(C) (b)(7)(C) NRC, reviewed (b)(7)(C) personnel security/background information file and found (b)(7)(C) credit history reflected many revolving accounts (i.e., credit cards, loans, etc.) for different amounts (varying from \$500 to \$22,000), most of which were opened in recent years and already paid off.

Additionally, while there were several high amount student loans—the latest one for \$222,348 in which he appeared to be a guarantor, no other information related to the financial alerts discovered at this juncture of the investigation was found in (b)(7)(C) file.

On October 30, 2014, OIG conducted electronic records queries that verified information reported by SIGTARP to OIG.

Interview of (b)(7)(C) Supervisor

With the intent to learn about potential revenue alternatives available to (b)(7)(C) or whether he had access to NRC funds and/or financial information with which he could access NRC pecuniary resources, OIG interviewed (b)(7)(C) (b)(7)(C) direct supervisor (b)(7)(C) OCFO. (b)(7)(C) told OIG it was her understanding that

- (b)(7)(C) position and duties in the NRC does not give him access to NRC funds or financial accounts. Instead, (b)(7)(C) primary function involves preparing reports, coordinating the drafting of the new contracts, and the Home-Sales—where he serves as the communication link between the relocating NRC employee and the relocation company. Hence, (b)(7)(C) is not involved in the transfer of funds, payments, or price negotiations in any of the aforementioned activities.
- (b)(7)(C) received insurance money when his home was severely damaged by an electrical fire in summer of 2013. As a result, (b)(7)(C) lived in temporary housing until his insurance company rebuilt his house. Then, by the end of summer of 2014 (possibly the end of August 2014), (b)(7)(C) sold that house and moved into a smaller home (his current residence) in the (b)(7)(C) MD, area.

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Interview of (b)(7)(C)

Following up on the information learned from (b)(7)(C) interview, OIG interviewed (b)(7)(C) on December 17, 2014. Prior to any questionings, OIG advised (b)(7)(C) of both his *Garrity Warnings and Assurances*, and *Weingarten rights*. After reading the aforementioned form and acknowledging the understanding of its content, (b)(7)(C) freely and willfully waived his *Garrity* and *Weingarten* rights, and volunteered to OIG the following information:

- He (and his wife) have made many withdrawals and deposits at casinos and Automated Teller Machines (ATMs) as part of his (their) regular gambling activities. (b)(7)(C) and his wife are habitual slot machine player(s) who frequent casinos, such as the *Maryland Live Casino*, located at the Anne Arundel Mills Mall complex, Hanover, MD—where he is a member of the *Chairman's Club*. However, none of the deposits or withdrawal activities are linked to criminal acts or funded by money laundering activities, fraud, or criminal proceeds. (b)(7)(C) frequency of his gambling activities has increased since last year. His position at OCFO-NRC does not give him access to NRC's funds or financial accounts.
- (b)(7)(C) gambling activities have been funded with home insurance money (provided by USAA Bank, a remote-based FDIC insured financial institution) that he began to collect in approximately July 2013 as a result of a fire that caused approximately \$250,000 worth of damage to his former residence, located at (b)(7)(C). As a result of this fire, (b)(7)(C) insurance funded his temporary quarters (for almost a year) and paid him more than \$40,000 in compensation/settlement checks. Additionally, his home insurance fully funded the reconstruction of his former residence, which he sold for \$600,000 (\$599,000 per *Zillow.com*) in October 2014. Per (b)(7)(C) he earned a profit of more than \$150,000 from this sale.
- Concurrently with the aforementioned home sale, (b)(7)(C) also obtained a 100-percent financed loan guaranteed by the U.S. Department of Veteran's Affairs (VA loan)—with a first payment set for September 2014—with which he bought a smaller home for \$500,000, in July 2014. (b)(7)(C) new home is located at (b)(7)(C).
- (b)(7)(C) prefers to finance his daily expenses with credit cards because it allows him to earn reward points. In addition, he also uses part of his gambling profits to pay his credit card bills. Examples of said gambling profits are evidenced by (b)(7)(C) receipt of G-1099's in 2013 and 2014.

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- (b)(7)(C) frequents casinos about four times a week, and spends an average of \$1,000. He has lost approximately \$75,000 to this date.

Review of Documents Provided by (b)(7)(C)

OIG confirmed the information (b)(7)(C) provided in his interview by reviewing the following documents that (b)(7)(C) willingly and voluntarily provided:

1. (b)(7)(C) (home sale) equity check issued in the amount of \$159,293.16.
2. A copy listing USAA insurance payments issued to (b)(7)(C) for an aggregate of \$68,262.29.
3. (b)(7)(C) G-1099 forms for 2013 and 2014 for \$1,233.00 and \$2,500.00, respectively.

On December 22, 2104, OIG confirmed via Zillow.com (an online real estate database) that (b)(7)(C) former residence was sold for \$599,000 on October 29, 2014, and (2) the purchase of his new residence took place on July 29, 2014, for \$500,000.00.

OIG briefed (b)(7)(C) NRC (b)(7) on this investigation, and will provide a copy of the closing memorandum to (b)(7)(C)

Because OIG did not identify criminal or employee misconduct in connection with (b)(7)(C) ATM withdrawals and deposits, it is recommended that this case be closed to the files of this office.

cc: (b)(7)(C) ADM/ (b)(7)(C)

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(b)(7)(C), (b)(7)(E)

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Historical File

OIG/AIGI	(b)(7)(C)	OIG/AIGI	OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)		(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
4/ /15	4/15/15	4/14/15	4/21/15	4/27/15	4/1/15	5/11/15


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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

November 8, 2016

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

FROM: 
Hubert Bell
Inspector General

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION REGION II
INSPECTOR ALLEGEDLY CONDUCTING A PRIVATE
BUSINESS DURING OFFICIAL DUTY HOURS (OIG CASE
NO. 15-019)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation (ROI) pertaining to an allegation that an NRC Region II employee was conducting a real estate business using Government equipment during work hours.

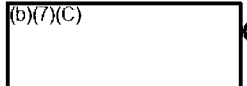
A copy of the ROI with exhibits is also attached for you to provide to the Office of the Chief Human Capital Officer.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the ROI nor its exhibits may be placed in ADAMS without OIG's written permission.

Attachments: Report of Investigation with Exhibits (plus one copy)

cc: , OGC w/exhibits
 ADM  w/exhibits

CONTACT:  OIG

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OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



U.S. Nuclear Regulatory Commission Region II Inspector Allegedly Conducting a
Private Business During Official Duty Hours

Case No. 15-019 /

(b)(7)(C)		(b)(7)(C)
(b)(7)(C)	Special Agent	(b)(7)(C) Team Leader


Joseph A. McMillan, Assistant Inspector General
for Investigations

11/2/16
Date

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STATUTES, REGULATIONS, AND POLICY

NRC Management Directive (MD) 2.7, Personal Use of Information Technology

Policy: It is the policy of the U.S. Nuclear Regulatory Commission to permit employees limited use of agency information technology for personal needs if the use does not interfere with official business and involves minimal or no additional expense to the NRC.

Handbook MD 2.7

Personal Use: An employee's activity that is conducted for purposes other than accomplishing official or otherwise authorized activity. NRC employees are specifically prohibited from using agency information technology to maintain or support a personal private business. Examples of this prohibition include employees using an agency computer and Internet connection to run a travel business or an investment service. The ban on using agency information technology to support a personal, private business also includes employees using agency information technology to assist relatives, friends, or other persons in such activities. Employees may, however, make limited use under this policy of agency information technology to, for example, check their Thrift Savings Plan or other personal investments, to seek employment, to communicate with a volunteer charity organization, or to file a Freedom of Information Act or Privacy Act request.

Inappropriate Personal Use: Use of information technology for commercial purposes or in support of "for-profit" activities or in support of other outside employment or business activity (e.g., consulting for pay, sales or administration of business transactions, sale of goods or services).

Inappropriate Personal Use: Any other activity that interferes with official duties.

Sanctions for Misuse: Unauthorized use of agency information technology could result in any or all of the following: loss of use or limitations on use of equipment, disciplinary or adverse actions, criminal penalties, and employee being held financially liable for the cost of improper use.

5 CFR § 2635.702 Use of public office for private gain

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including

nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations.

5 CFR § 2635.704 Use of Government property

- (a) Standard. An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.
- (b) Definitions. For purposes of this section:
 - (1) Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.
 - (2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

5 CFR § 2635.705 Use of official time

- (a) Use of an employee's own time. Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

18 USC § 1001 Statements or entries generally

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or

representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

18 USC § 287 False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

18 USC § 1343 Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

SUBJECT

(b)(7)(C)

(b)(7)(C)

Division of Reactor Projects, Region II
U.S. Nuclear Regulatory Commission (NRC)

ALLEGATION

The Office of the Inspector General (OIG), NRC, initiated this investigation based on several anonymous allegations that (b)(7)(C) then (b)(7)(C) (b)(7)(C) Region II, was operating a real estate business during official work hours and potentially using NRC Government technology and equipment to support her private business.

FINDINGS

OIG found that (b)(7)(C) used her Government-issued computer to conduct private business as a real estate agent associated with the (b)(7)(C) in Atlanta, GA. For example, (b)(7)(C) used her Government computer to email two NRC Region II employees in January 2013 and December 2011 to inquire if they were in the market for purchasing a property. In the emails, (b)(7)(C) offered her assistance as a real estate agent, and provided them with her real estate contact information. In several email exchanges between February and May 2012, (b)(7)(C) used her Government email account to email a then Office of Nuclear Reactor Regulation employee about real estate, for whom (b)(7)(C) ultimately completed a real estate sales transaction for the employee. In May 2014, (b)(7)(C) used her Government email account to communicate with a Region II (b)(7)(C) regarding real estate matters from which she earned a commission.

(b)(7)(C) also used her Government email account to forward real estate emails to her personal real estate business account. Specifically, (b)(7)(C) also forwarded real estate related emails from her Government account to (b)(7)(C)

OIG determined that between February and June 2015, (b)(7)(C) used her Government computer to visit the following real estate Web sites on 32 days out of a total of 134 calendar days:

- DocuSign.com,
- Fmls.com,
- Fmls.fusionsmls.com,

- Realestategalleryga.com,
- Email (b)(7)(C)
- Fmls.esignonline.net, and
- Agents.equator.com.

OIG also determined on two occasions between February 2015 and June 2015 (b)(7)(C) accessed the Internet via her Government computer to send real estate related documents via "DocuSign.com." OIG found that (b)(7)(C) maintained on her Government computer a copy of a loan application of a potential real estate client that included Internal Revenue Service forms and other documents containing sensitive personal information, including social security numbers.

OIG also determined that (b)(7)(C) represented six NRC Region II employees in real estate transactions. While (b)(7)(C) used her Government computer to exchange emails with two of the six employees she represented in a real estate transaction, all six employees maintained that (b)(7)(C) did not actively promote her real estate business or engage in real estate matters during work hours at the NRC Region II office.

(b)(7)(C) admitted that she sent documents through DocuSign for signature during work hours using the NRC Internet. She also admitted that the "main" Web sites she visits using the NRC Internet are her (b)(7)(C) email, DocuSign, and, First Multiple Listing Service (FMLS) accounts. (b)(7)(C) also stated she used her NRC computer to access the Internet to read real estate articles and to check on the status of real estate listings.

BASIS FOR FINDINGS

Review of NRC Internet Logs Using LogLogic

NRC uses (b)(7)(E) to log NRC Internet activity. The logs can be identified by the Internet Protocol (IP) address assigned to a user. The NRC Office of Information Systems advised OIG that the IP address assigned to (b)(7)(C) was (b)(7)(E) from January 2015 to July 22, 2015, and (b)(7)(E) from July 23, 2015 to January 2016. The IP address was changed because (b)(7)(C) requested a new computer in July 2015.

OIG reviewed NRC Internet (b)(7)(E) records for (b)(7)(C) Internet activity from February 2-3, 2015, and from March 2-3, 2015, and identified that she used her Government computer to visit the following real estate related Web sites:

- DocuSign.com,
- Fmls.com,
- Fmls.fusionsmls.com,
- Realestategalleryga.com,
- Fmls.esignonline.net,
- Agents.equator.com, and
- Email (b)(7)(C)

OIG reviewed additional (b)(7)(E) records to identify the number of days she visited these Web sites throughout 2015. This review identified that between February and June 2015, (b)(7)(C) visited these real estate related Web sites a total of 32 days out of 134 calendar days. The records did not indicate that (b)(7)(C) visited these Web sites from July to December 2015. [Investigative Note: (b)(7)(C) learned she was under investigation by OIG in May 2015 and she was interviewed by OIG in August 2015.]

(For further details, see Exhibits 1-3.)

Forensic Review of Government Computer

In August 2015, OIG conducted a computer forensic review of (b)(7)(C) NRC Government computer, number (b)(7)(E) (associated with IP address (b)(7)(E)). As noted above, (b)(7)(C) was assigned this new computer in July 2015. A review of Internet browsing history did not reveal visits to real estate related Web sites on this computer.

The following documents related to (b)(7)(C) work as a real estate agent were found on the computer:

- Bank of America statement for (b)(7)(C) dated April 1, 2013, through April 30, 2013 [(b)(7)(C) U.S Office of Government Ethics (OGE) Form 450 indicates that she was a partner with this company from 2013 to 2014].
- Purchase and sale agreement dated May 8, 2013, indicating that (b)(7)(C) was the selling broker or broker's affiliated licensee for (b)(7)(C)
- Fax to (b)(7)(C) at (b)(7)(C) [(b)(7)(C) office fax number] dated May 8, 2014, which included a real estate loan application for a potential client. [Investigative Note: The loan application included Internal Revenue Service forms and other documents that contained sensitive personal information, including social security numbers.]

Also identified on (b)(7)(C) computer was a file containing archived emails related to her real estate business, including the following:

- Email dated September 2013 from (b)(7)(C) to her Government NRC email account (b)(7)(C)@nrc.gov regarding (b)(7)(C) (b)(7)(C) identifying a "Pre-Foreclosure Letter for Sellers."
- Email dated January 2010 from (b)(7)(C) to her Government NRC email account (b)(7)(C)@nrc.gov regarding (b)(7)(C) (b)(7)(C) "contract estimates" related to housing repairs.
- Email exchange from (b)(7)(C) Government email account to an NRC Region II employee, (b)(7)(C) between January 31, 2013, and February 1, 2013, inquiring if she was in the market for purchasing a property. In the emails, (b)(7)(C) offered her assistance as a real estate agent, and provided (b)(7)(C) with her real estate contact information.
- Email exchange between (b)(7)(C) and an NRC Region II employee, (b)(7)(C) (b)(7)(C) between December 20 and 21, 2011, inquiring if she was in the market for purchasing a property. In the emails, (b)(7)(C) offered her assistance as a real estate agent, and provided (b)(7)(C) with her real estate contact information.
- Email exchange in February 2012, between (b)(7)(C) and a former Office of Nuclear Reactor Regulation (NRR) employee, (b)(7)(C) during which (b)(7)(C) requested (b)(7)(C) assistance with purchasing a property in the Atlanta, GA, area. The email exchange referenced information regarding real estate and property listings.
- Email exchange in April 2012, between (b)(7)(C) and (b)(7)(C) referencing "7 Price Changes-Price Change E-mail Alert," in which (b)(7)(C) confirms she submitted two offers on a property for (b)(7)(C)
- Email exchange in May 2012, between (b)(7)(C) and (b)(7)(C) regarding a real estate offer being rejected.

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[Investigative Note: OIG identified through (b)(7)(E) and (b)(7)(C) (b)(7)(C) Web site email account that she conducted a real estate transaction for (b)(7)(C) in August 2012.]

(For further details, see Exhibit 4.)

OIG reviewed (b)(7)(C) NRC Government Email Account

OIG obtained from the Office of the Chief Information Officer (b)(7)(C) emails on the NRC network covering the period of February 1, 2014, to March 3, 2015, and identified the following relevant emails:

- An email dated April 15, 2014, from (b)(7)(C) DRP, Region II, to (b)(7)(C) Government email address asking (b)(7)(C) to call her regarding a real estate attorney.
- An email dated April 22, 2014, forwarded from (b)(7)(C) Government email account to her (b)(7)(C) email account pertaining to verbiage for a real estate resume.
- Three emails dated May 27, 2014, between (b)(7)(C) Government email address and the personal email account of (b)(7)(C) DRP, Region II, regarding real estate matters.
- Two emails dated May 27, 2014, forwarded from (b)(7)(C) Government email account to her (b)(7)(C) email account related to (b)(7)(C) real estate matters.
- Two emails dated June 18, 2014, that (b)(7)(C) sent to three Office of Personnel Management staff members in which she inquired about Federal Government Science, Technology, Engineering and Math (STEM) outreach efforts/initiatives in support of a non-profit business (the (b)(7)(C)) that, according to the emails, she and her husband started in 2008 to encourage young individuals to pursue careers in STEM fields.
- An email dated June 24, 2014, from (b)(7)(C) to former NRC Commissioner William MAGWOOD in which she inquired about Federal Government STEM outreach efforts/initiatives in support of the (b)(7)(C).
- An email dated February 11, 2015, from the personal email account of (b)(7)(C) DRP, Region II, to (b)(7)(C) Government email address and her (b)(7)(C) email account, requesting a list of condominiums and townhouses for rent in the Decatur [Georgia] area.

(For further details, see Exhibit 5.)

Analysis of DocuSign.com Records

OIG compared (b)(7)(C) usage of DocuSign to her Internet history and time and attendance records to ascertain whether (b)(7)(C) used Government equipment to conduct real estate transactions through DocuSign. OIG learned that (b)(7)(C) used her Government equipment and Internet to access "DocuSign.com" on two occasions between February 2015 and June 2015, to send real estate related documents. Both of the transactions occurred during her approved core work hours; however, because (b)(7)(C) is on a flexible work schedule, OIG was unable to determine if she conducted the transactions on NRC time.

(For further details, see Exhibit 6.)

Analysis of Records from (b)(7)(C) Realtors

OIG subpoenaed (b)(7)(C) for records identifying real estate sales transactions, including times and dates of mortgage closings and home purchase closings conducted by (b)(7)(C) for the time period January 1, 2014, to August 1, 2015. Subpoenaed documents revealed that during this time period, (b)(7)(C) earned \$24,173.96 in commissions and \$500 in referrals, totaling \$24,673.96.

(For further details, see Exhibit 7.)

Review of (b)(7)(C) Confidential Financial Disclosure Reports

A review of (b)(7)(C) OGE Form(s) 450, Confidential Financial Disclosure Reports, showed that (b)(7)(C) reported receiving assets and income associated with (b)(7)(C) from 2013 to 2014 and listed (b)(7)(C) as an outside position from 2013-2015. (b)(7)(C) also reported (b)(7)(C) as an outside position, but did not report earning any income associated with the foundation.

(For further details, see Exhibits 8.)

Interviews of Region II Employees Who Participated in (b)(7)(C) Real Estate Transactions

By comparing information in (b)(7)(C) Web page with data in an NRC and a (b)(7)(E) database, OIG identified six Region II employees who participated in real estate transactions completed by (b)(7)(C). OIG interviewed each of the six employees to determine whether (b)(7)(C) promoted her real estate business or initiated any real estate related interactions during working hours and/or at the NRC Region II office. All six employees stated that (b)(7)(C) did not actively promote her real estate business or engage in real estate matters during work hours at the Region II

office. [Investigative Note: As previously noted, OIG identified that (b)(7)(C) used her Government computer to exchange emails with two of the six NRC Region II employees she represented in a real estate transaction. The two Region II employees confirmed that they essentially communicated through their personal email accounts and (b)(7)(C) (b)(7)(C) email account.]

(For further details, see Exhibit 9 - 15.)

Interview of (b)(7)(C)

(b)(7)(C) (b)(7)(C), Region II, told OIG that she supervised (b)(7)(C) during her past two assignments in Region II branches, which included the (b)(7)(C) branch and the (b)(7)(C) branch where, until recently, (b)(7)(C) was a (b)(7)(C) (b)(7)(C) was (b)(7)(C) branch chief in (b)(7)(C) from February 1, 2015, until her promotion to a (b)(7)(C) (b)(7)(C) position. At the time of the OIG interview in April 2015, (b)(7)(C) said (b)(7)(C) was under her supervision while she (b)(7)(C) was transitioning into her new position.

(b)(7)(C) advised OIG that (b)(7)(C) teleworks 1 day per week (Thursdays) and that is on the "NewFlex work schedule" from 7 a.m. to 3:45 p.m. (b)(7)(C) said (b)(7)(C) is conscientious about reporting her leave during the week and about contacting her (b)(7)(C) if she will be late for work. She said (b)(7)(C) sometimes reports to the office in the morning, takes leave during the middle of the day, and then reports back to work later that day. According to (b)(7)(C) is a "really hard worker" and (b)(7)(C) does not have to "watch over" her. She said (b)(7)(C) "gets her work done," and "if we had a lot of (b)(7)(C) at NRC, we'd get a lot more done."

(b)(7)(C) said she became aware of (b)(7)(C) real estate business because someone at NRC said that their realtor was (b)(7)(C). (b)(7)(C) said no one has voiced any concerns to her about (b)(7)(C) conducting a private business during work hours.

(For further details, see Exhibit 16.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG she began working for NRC in June 2006. Her work schedule is Monday through Friday from 7 a.m. to 3:45 p.m., but she also earns credit hours.

(b)(7)(C) said she has been a licensed real estate agent with (b)(7)(C) for 5 1/2 years. She and her husband also have a non-profit business (b)(7)(C) (b)(7)(C) that is geared toward tutoring and public speaking with young students to encourage careers in STEM fields. She said (b)(7)(C) goals align with some of NRC's values and initiatives for outreach.

With regard to (b)(7)(C) said she has done some public speaking at high schools during work hours and her management granted her excused absence. (b)(7)(C) told OIG that the Region II Human Resource Division (HRD) advised her that there is an NRC policy that allows supervisors to grant a limited amount of excused absence to support activities directly related to enhancing awareness of STEM careers and interest. [Investigative Note: Following her OIG interview, (b)(7)(C) emailed a copy of the email from her Region II HRD referencing an NRC announcement, August 23, 2012 – *NRC Employee Resources: Workplace Flexibilities Available to Participate in Volunteer Activities*, which states, "for volunteer activities that are directly related to the NRC's mission and/or in the NRC's interest (such as explaining NRC's functions to school groups), supervisors may consider granting a limited amount of excused absence for occasional, brief periods of time to participate in the volunteer activity" as it relates to STEM.] (b)(7)(C) said if she leaves work to attend an event for her non-profit that is not related to NRC initiatives, she will take leave. (b)(7)(C) told OIG she does not make any income from (b)(7)(C). She said she has received excused absences to participate in some STEM related events; however, she was never paid to participate in these events.

(b)(7)(C) said her NRC management is aware that she has a real estate and non-profit business. However, she is not aware if her management was aware that she sometimes conducts real estate business from her NRC office space. (b)(7)(C) said she has several real estate related accounts through (b)(7)(C), such as an email account (b)(7)(C) or (b)(7)(C), (b)(7)(C) office page (b)(7)(C), Multiple Listings Service account [also known as FMLS.com], and DocuSign account (DocuSign.com).

(b)(7)(C) said she does not "typically" use the NRC Internet or equipment to conduct work for her private business, but she occasionally checks her (b)(7)(C) emails from her NRC computer. (b)(7)(C) said she has used her NRC computer to read real estate articles, check on new information in the real estate industry, and check for new properties on the market. She did not know how often she used her NRC computer to visit these accounts or Web sites. However, she said if she needed a break from her NRC work, she would use her NRC computer to look at real estate related things. (b)(7)(C) said she went on her MLS account and (b)(7)(C) email account daily, but not always using her NRC computer. Instead, she said she might use her cell phone to check these accounts during NRC work hours or after work hours.

(b)(7)(C) said she has used DocuSign for personal and business matters and she has sent documents through DocuSign for signature during work hours for personal and business related matters. (b)(7)(C) said the times she would send a document through DocuSign during work hours she would be on a break. (b)(7)(C) said her process for sending a document through DocuSign typically takes 3 to 5 minutes and involves (1)

selecting the document from her MLS account, (2) saving it to her computer, and (3) if a signature is needed, uploading the document to DocuSign and sending it through the system. (b)(7)(C) stated that she does not necessarily go to DocuSign daily and she only uses it when she needs to send a document.

(b)(7)(C) stated that her FMLS account allows her to view new real estate properties in a particular neighborhood. She said she will search for new properties, sold properties, sales price, comps on the properties, and view different real estate related reports.

(b)(7)(C) stated that fmls.fusionmls.com is the same as fmls.com; however, fusionmls.com is a different screen with the same information. (b)(7)(C) stated that she may visit her FMLS account on her two breaks that could last up to 30 minutes total per day.

(b)(7)(C) said she "may" have used her NRC computer to view agent.equator.com. She said this Web site shows a listing of short sales and foreclosures, and permits communication through the site. (b)(7)(C) said she receives emails through her (b)(7)(C) account, which has a link to "equator," and this allows her to correspond with real estate agents/companies. (b)(7)(C) did not know how often she visited this site at work, but said she may have responded to an email or attached a document which could have taken a few minutes.

(b)(7)(C) said the "main" Web sites she visits over the NRC Internet are her (b)(7)(C) email account, DocuSign account, and FMLS account. (b)(7)(C) could not recall any other real estate related Web sites she visited on a "regular basis" during work hours.

(b)(7)(C) said when she opens a Web site on the NRC Internet, she typically leaves it open unintentionally [i.e., tends to open the Web site but forgets to close it]. (b)(7)(C) said she rarely took her NRC laptop home, so she eventually exchanged it for a desktop.

(b)(7)(C) said her real estate schedule is more "hectic" after NRC working hours and on weekends, which is when she does most of her real estate business. (b)(7)(C) said if she has a client who wants to see properties during the work day, she uses credit hours or annual leave. If she has a client whose schedule cannot be adjusted around her work schedule, (b)(7)(C) will often ask another real estate agent at the (b)(7)(C) office if they can take her client and she will pay them a fee.

(b)(7)(C) said she did not believe she has ever used her NRC email account to send real estate related emails. However, when OIG presented the emails sent from her Government email account regarding real estate, she acknowledged having done so and explained the basis for the emails. (b)(7)(C) told OIG she had real estate clients who work at NRC and are also personal friends. (b)(7)(C) said the only reason she

would send a real estate related email to a client's NRC email account was because they requested to receive emails at that account. She said she usually sent emails through her (b)(7)(C) email account.

(For further details, see Exhibits 17-18.)

Coordination with Department of Justice

OIG referred this investigation to the U.S. Attorney's Office for the Northern District of Georgia and the U.S. Attorney's Office for the Western District of Washington for criminal prosecution. Both offices declined prosecution in lieu of administrative action.

LIST OF EXHIBITS

1. Memorandum to File, Review of (b)(7)(E) Logs February 2-3, 2015 and March 2-3, 2015, dated June 10, 2016, with attachments.
2. Memorandum to File, IP Address and Computer Changes July 2015, dated May 6, 2016.
3. Memorandum to File, Review of NRC Internet Logs for Internet Activity of (b)(7)(C), dated June 24, 2016.
4. Memorandum to File, Forensic Review of NRC Computer Assigned to (b)(7)(C) (b)(7)(E) IP Address (b)(7)(E) dated September 23, 2015, with attachments.
5. Memorandum to File, Review of Email, (b)(7)(C) NRC User (b)(7)(C) dated August 7, 2015, with attachments.
6. Memorandum to File, Review of Responsive Documents, Court Order No. GJ15-243, dated July 27, 2016, with attachment.
7. Memorandum to File, Review of Responsive Documents, Subpoena OIG-2015-06, dated February 18, 2016, with attachments.
8. Memorandum to File, Review of the Confidential Financial Disclosure Reports for (b)(7)(C) dated August 11, 2015.
9. Memorandum to File, Assessment of (b)(7)(C) Potential Involvement with NRC Employees Real Estate Transaction, dated February 18, 2016, with attachment.
10. Transcript of Interview of (b)(7)(C) dated September 19, 2016.
11. Transcript of Interview of (b)(7)(C) dated September 19, 2016.
12. Transcript of Interview of (b)(7)(C) dated September 19, 2016.
13. Transcript of Interview of (b)(7)(C) dated September 19, 2016.
14. Transcript of Interview of (b)(7)(C) dated September 20, 2016.
15. Memorandum of Interview, (b)(7)(C) dated October 24, 2016.
16. Transcript of Interview of (b)(7)(C) dated April 29, 2015.

17. Transcript of Interview of (b)(7)(C) dated August 19, 2015.
18. Memorandum of Interview, Telephonic Interview of (b)(7)(C) dated March 15, 2016, with attachments.

Distribution
Case File 15-019

Magnum

OIG (b)(7)(C)	OIG	(b)(7)(C)	OIG	OIG	OIG	OIG
				J. McMillan	D. Lee	H. Bell
10/27/16	11/09/16	1/1/16	10/28/16	11/24/16	11/17/16	11/18/16

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OFFICE OF THE
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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

September 30, 2015

MEMORANDUM TO: Mark A. Satorius
Executive Director for Operations

FROM: 
Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL IMPROPER STORAGE OF OFFICIAL NRC
ELECTRONIC DOCUMENTS (OIG CASE NO. 15-021)

Attached are two copies of an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation pertaining to potential improper storage of official NRC electronic documents.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the Report of Investigation nor its exhibits may be placed in ADAMS without the written permission of the OIG.

Attachment: Report of Investigation w/ exhibits (two copies)

cc: (b)(7)(C) OGC w/ exhibits
(b)(7)(C), ADM (b)(7)(C) w/o exhibits

CONTACT: (b)(7)(C) OIG

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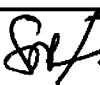
OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



Potential Improper Storage of Official NRC Electronic Documents

OIG Case No. 15-021

(b)(7)(C)	(b)(7)(C)
(b)(7)(C)	Special Agent
(b)(7)(C)	Team Leader
(b)(7)(C)	
	09/25/15
Joseph A. McMillan, Assistant Inspector General for Investigations	Date

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STATUTES, REGULATIONS, AND POLICY

NRC MD 12.5 - NRC AUTOMATED INFORMATION SECURITY PROGRAM

POLICY:

(a) It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to implement and maintain an agency-wide automated information security program to protect information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to ensure -

Confidentiality, that is, preserving authorized restrictions on access and disclosure, including the means for protecting personal privacy and proprietary information;

Integrity, that is, guarding against improper information modification or destruction and ensuring information non-repudiation and authenticity;

Availability, that is, ensuring timely and reliable access to and use of information.

(b) The information security protections shall be commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of information or information systems that are operated, maintained, or sponsored by the agency.

NRC Agency-wide "Rules of Behavior for Authorized Computer Use" Version 1.2

3.1 System Access and Use

- Follow established procedures for accessing information, including the use of user identification (ID), authentication information and other physical and logical safeguards.
- Follow established procedures for requesting and disseminating information.
- Users Shall Not, place unauthorized software onto an NRC computing resource.
- Users Shall Not, Use any computing resource to process NRC information unless it has been authorized by the DAA.
- Users Shall Not, Connect a computing resource to any system, including infrastructure systems, without DAA authorization.

3.3 Electronic Data Protection

- The user is responsible for protecting the confidentiality, integrity, and availability of NRC information and files. Storage, disposal, mailing, and electronic transmission of sensitive information shall be in accordance with Federal and NRC policies and directives. For a complete list of Federal and NRC policies and directives related to this policy, please refer to Appendix A - References. Users shall not create or maintain a Privacy Act system of records (e.g., files of individuals retrievable by name and/or personal identifier) on an NRC system without approval of the NRC Senior Agency Official for Privacy. Users shall protect sensitive unclassified non-safeguards information (SUNSI) documents in accordance with guidance located at <http://www.internal.nrc.gov/sunsi/index.html>.

3.3.1 Electronic Personally Identifiable Information

- Users shall . . . Ensure that PII retrieved by an individual's name or other personal identifier is maintained in an authorized Privacy Act system of records for which a system notice has been published in the Federal Register.
- User shall not . . . Remove electronic NRC sensitive data (including PII) from NRC controlled spaces unless it is appropriately encrypted using an NRC approved cryptographic method. SecureZip and MXI Stealth thumb drives are two examples of approved methods for encrypting and storing electronic NRC sensitive data.
- User shall not . . . Use personally owned computing resources for processing or storing PII of individuals pertaining to NRC official business other than themselves, except as formally (i.e., in writing as an official record) approved by the DAAs.
- User shall not . . . E-mail or otherwise transmit PII outside of the NRC's infrastructure, except when necessary to conduct agency business. E-mailing PII within the NRC LAN or wide-area network is acceptable, including to and from BlackBerry handheld devices that interact within the NRC's e-mail system.

3.11 User Accountability

- Unauthorized use of a user account or a computing resource can result in criminal penalties under Section 1030, Title 18, of the United States Code. Users will be held accountable for their access and use of NRC computing resources.

SUBJECT

(b)(7)(C)

International Operations Branch
Office of International Programs
U.S. Nuclear Regulatory Commission

ALLEGATION

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an anonymous allegation that (b)(7)(C) was maintaining a copy of the Office of International Programs (OIP) G-drive on a personal thumb drive.

FINDINGS

OIG found that (b)(7)(C) used a personally owned external computer hard drive to store all information maintained on OIP's G-drive without obtaining NRC authorization to do so, and he brought the hard drive back and forth between NRC and his residence. OIP maintains a variety of sensitive unclassified information on its G-drive, including documents received from foreign countries and a (b)(7)(E) Database that tracks foreign nationals who come to work for NRC, internal/external NRC reports to the Department of State and the Department of Energy, a password protected Passport Database, and the NRC (b)(7)(E) database).

OIG also found that (b)(7)(C) used a personal thumb drive to transfer pdf files from his home computer to his NRC computer without NRC authorization to do so.

OIG found that (b)(7)(C) downloaded/stored the NRC (b)(7)(E) (b)(7)(E) (database) on his home computer without permission to do so. Although the system contains primarily information that is publicly available, the system also tracks sealed source material and, due to security concerns, the addresses where source material is located are not publicly available.

(b)(7)(C) admitted that he used these unauthorized devices to store and transfer sensitive NRC information and was not authorized to do so and that he was aware that authorization was required. He backed up OIP's G-drive information onto the hard drive as part of an NRC Continuity of Operations (COOP) exercise, and used the thumb drive to bring posters to work that he designed at home using software that NRC would not provide him with.

BASIS FOR FINDINGS

Interview of (b)(7)(C)

(b)(7)(C) supervisor, (b)(7)(C) OIP, told OIG that (b)(7)(C) is OIP's (b)(7)(C) person, and that he (b)(7)(C) for OIP. (b)(7)(C) described (b)(7)(C) as a computer expert, very knowledgeable about different systems, and the contact person for any technology/computer related questions. (b)(7)(C) said (b)(7)(C) has access to the same programs that all OIP employees have access to on OIP's network, with the exception of some password protected files.

(b)(7)(C) stated (b)(7)(C) told her he was going to conduct an analysis of the OIP G-drive to determine how many files were maintained on the G-drive and how old the files were. When asked if (b)(7)(C) conducted an analysis of the OIP G-drive as part of a COOP exercise, she said he never mentioned that to her. (b)(7)(C) said she was not aware that (b)(7)(C) was going to use a personally owned external hard drive to perform the analysis of the G-drive. She became aware that (b)(7)(C) was using an external hard drive and thumb drive to store records from the OIP G-drive and to transfer files between work and home when she was contacted by the OIG and (b)(7)(C) also informed her that he was interviewed by OIG concerning this matter. (b)(7)(C) told OIG that no one authorized (b)(7)(C) to use his personally owned external hard drive or provided him with authorization to use a personally owned thumb drive. (b)(7)(C) said (b)(7)(C) told her he wiped his personally owned hard drive clean after being contacted by OIG to meet because he wanted to show OIG that he was not maintaining this information.

(b)(7)(C) further stated that OIP's G-drive contains information that is publically available in ADAMS; sensitive unclassified non-safeguards information (SUNSI), some of which is password protected; and official use only information (OUO). She said the G-drive does not contain classified information.

(b)(7)(C) also stated that (b)(7)(C) often works from home because he prepares a newsletter called (b)(7)(C) for a list of NRC subscribers. She did not know the specifics of how he prepares the newsletter. (b)(7)(C) was aware that (b)(7)(C) used a personal computer to work from home before being assigned an NRC laptop. However, she was unsure if (b)(7)(C) was currently using his NRC laptop or his personal computer at home.

OWENS further stated that she was not aware that (b)(7)(C) had saved the NRC OIP's License Correspondence Tracking System (database) from the OIP G-drive on

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his home computer, and she did not see the need for this because he has access to the OIP G-drive while teleworking. (b)(7)(C) told OIG that the information in the database is not sensitive; it tracks dates when an application was received, dates a letter was sent, dates when information was received from other offices, and/or dates when licenses were issued or when a final action was taken.

(For further details, see Exhibits 1, 2, and 3.)

Interview of (b)(7)(C)

(b)(7)(C) OIP, told OIG that the OIP G-drive contains all the NRC international bilateral agreements with classifications such as Official Use Only, Proprietary, and SBU (Sensitive but Unclassified, which is a State Department Classification). (b)(7)(C) told the OIG that (b)(7)(C) has backed up the OIP G-drive for years for the OIP office; however, she did not know how he performed the backup. (b)(7)(C) recalled (b)(7)(C) being present at a staff/management meeting where they discussed (b)(7)(C) backing up the OIP G-drive.

(b)(7)(C) said that the NRC (b)(7)(E) (database) is used as an internal organizational tool for tracking the application number, identity of the applicant, country dates, destination, material and quantity, and Special Nuclear Material. However, the database also tracks sealed source material and due to security concerns, the addresses where the source material is held (storage location) are non-public.

(For further details, see Exhibit 4.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG he is responsible for information management within OIP. He maintains several tracking systems that OIP utilizes, such as the export/import licensing tracking system (NRC OIP's License Correspondence Tracking System (database)), NRC OIP SharePoint site, and NRC OIP's Web site. He also authors/distributes the (b)(7)(C) newsletter.

(b)(7)(C) admitted to backing up the OIP G-drive onto a personally owned encrypted external hard drive, a Western Digital Passport Drive, in connection with a COOP exercise but did not recall when this occurred. He carried the external hard drive back and forth between his home and work, and the external hard drive was always in his possession. (b)(7)(C) deleted the OIP G-drive files from the hard drive immediately, 2 or 3 days after backing up the G drive to perform his test for the COOP

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(b)(7)(C) exercise. (b)(7)(C) mentioned to (b)(7)(C) that he backed up the OIP G-drive after the backup was complete. He never transferred any information stored on the hard drive to a personal computer or to any non-NRC employees, and never printed any information from the hard drive or emailed any information stored on the hard drive.

(b)(7)(C) stated that the information he backed up on the external hard drive included the Foreign Assignee Database that tracks foreign personnel who come to work at the NRC, the export/import licensing database that tracks all export/import licenses, reports that NRC sends to the State Department and Department of Energy, the Ticket Database, and the Passport Database. (b)(7)(C) told OIG that he realized that the OIP G-drive contained sensitive internal information after he backed up the OIP G-drive and noticed that NRC added a banner on the internal assignee reports from the Foreign Assignee Database displaying that this information was sensitive.

(b)(7)(C) admitted he used an unauthorized personal thumb drive to transfer PDF files from his home computer to his NRC computer. He designed unclassified posters for an NRC conference on his home computer using the program, Adobe Illustrator, which NRC refuses to provide him with. (b)(7)(C) has only done this three or four times using his personal thumb drive.

(b)(7)(C) also admitted that the NRC OIP's License Correspondence Tracking System (database) was downloaded on his personal computer because he was unable to gain access to it through CITRIX prior to getting a NRC laptop to carry home.

(b)(7)(C) added that the database was no longer on his personal computer and the database may have been on his personal computer for a month or so before he deleted it.

(b)(7)(C) stated that he did not receive authorization from NRC to use his personally owned external hard drive or thumb drive. He also did not receive authorization from his management to back up the OIP G-drive or transfer files from his thumb drive, and did not receive authorization to download/save the NRC OIP's License Correspondence Tracking System (database) on his personal computer. However, he was aware that he needed authorization from NRC to use a personally owned external hard drive and/or thumb drive. (b)(7)(C) said that he never applied for a NRC authorized thumb drive because "they never work."

(b)(7)(C) stated that he wiped his personal hard drive clean after OIG contacted him to be interviewed because he thought it was best to do so, so that when OIG examined it, it would be clean. [Investigative Note: When a file is deleted, it is no longer visible. When a drive is wiped (i.e., formatted) it is overwritten with either zeros

or random data, making it much harder for data to be recovered.] At the conclusion of the interview, (b)(7)(C) provided verbal and written consent for OIG agents to search his personally owned external hard drive.

(For further details, see Exhibits 5 and 6.)

Forensic Review and Analysis of (b)(7)(C) External Hard Drive

OIG conducted a forensic review of (b)(7)(C) personally owned external Western Digital My Passport, Universal Serial Bus (USB), 1 Terabyte (TB) Hard Drive to determine whether it contained any NRC related information. OIG's analysis indicated that the device was formatted on April 1, 2015, at 10:50 p.m. [Investigative Note: The device was formatted 1 day prior to (b)(7)(C) scheduled interview with OIG on this matter.] The formatted folders did not contain any documents. A search of unallocated space did not reveal any documents. [Investigative Note: The absence of documents from the device is consistent with (b)(7)(C) testimony that he wiped the drive.]

(For further details, see Exhibit 7.)

Interview of (b)(7)(C)

(b)(7)(C) Computer Security Office (CSO), told OIG that NRC employees are permitted to maintain information from their program office network drives on a hard drive/thumb drive only if it is an encrypted NRC-issued device. She said it is a violation for employees to maintain information from their program office network drives on a personal device unless the employee receives authorization to use his or her personally owned device. (b)(7)(C) confirmed that if an employee is storing NRC material on his or her personal devices, it constitutes a violation that CSO will handle.

(b)(7)(C) confirmed that all implementation, including use of specific thumb drives, must be authorized by the NRC Designated Approving Authority. In addition, thumb drives must be in compliance with CSO-STD-2004/Electronic Media and Device Handling.

(For further details, see Exhibit 8.)

Review of (b)(7)(C) Official Personnel Security File

OIG reviewed (b)(7)(C) official personnel security file and learned that prior to his employment with NRC, (b)(7)(C) was employed by the International Atomic Energy Agency in Vienna, Austria, from 1971 to 1985. (b)(7)(C) joined NRC on February 3,

1985, as an International Analyst. (b)(7)(C) was granted a "Q" clearance on April 15, 1985. He was also granted access to Sensitive Compartmented Information (SCI) and assigned a Secure Internet Protocol Routing Network (SIPRNet) account. [Investigative Note: When granted access to SCI, employees are authorized to enter the Sensitive Compartmented Information Facility to view classified emails and reports.] On July 22, 2013, (b)(7)(C) security clearance was downgraded to an "L" clearance. There were no security infractions on record for (b)(7)(C).

(b)(7)(C) personnel file noted that he was born in (b)(7)(C) and moved to (b)(7)(C) with his mother (b)(7)(C) and sister when he was 10 years old. It was noted that "he has not held dual citizenship with any other foreign country or issued a passport by a foreign country."

The NRC Information Security Branch noted that (b)(7)(C) last logged into his NRC's SIPRNet account on September 28, 2012, and his SIPRNet account was disabled on June 5, 2014.

(For further details, see Exhibits 9 and 10.)

LIST OF EXHIBITS

1. Transcript of Interview of (b)(7)(C), dated May 13, 2015.
2. Memorandum to File, Telephone Conversation with (b)(7)(C) dated March 3, 2015.
3. Memorandum to File, Verification of the NRC OIP's License Correspondence Tracking System (database), dated July 20, 2015.
4. Memorandum of Interview of (b)(7)(C) dated April 6, 2015.
5. Transcript of Interview of (b)(7)(C) dated April 2, 2015.
6. Transcript of Interview of (b)(7)(C) dated June 26, 2015.
7. Memorandum to File, Forensic Imaging of External Hard Drive, dated May 5, 2015.
8. Memorandum to File, Telephone Conversation with (b)(7)(C) dated March 18, 2015.
9. Memorandum to File, Review of (b)(7)(C) Personnel Security Folder, dated September 14, 2015.
10. Memorandum to File, SIPRNet Account Access Information- (b)(7)(C) (b)(7)(C) dated April 6, 2015.

MEMORANDUM TO: Mark A. Satorius
Executive Director for Operations

FROM: Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL IMPROPER STORAGE OF OFFICIAL NRC
ELECTRONIC DOCUMENTS (OIG CASE NO. 15-021)

Attached are two copies of an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation pertaining to potential improper storage of official NRC electronic documents.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the Report of Investigation nor its exhibits may be placed in ADAMS without the written permission of the OIG.

Attachment: Report of Investigation w/ exhibits (two copies)

cc: (b)(7)(C) OGC w/ exhibits
(b)(7)(C) ADM (b)(7)(C) w/o exhibits

CONTACT: (b)(7)(C), OIG

Distribution:

File Location: (b)(7)(C), (b)(7)(E)

Case File 15-21 Historical File MAGNUM

OIG/AIGI	OIG/AIGI	(b)(7)(C)	OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
9/3/15	9/4/15	9/24/15	9/25/15	9/25/15	9/28/15	9/29/15

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OFFICE OF THE
INSPECTOR GENERAL

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 2, 2015

MEMORANDUM TO:

(b)(7)(C)

OCHCO

(b)(7)(C)

OGC

(b)(7)(C)

ADM

FROM:

(b)(7)(C)

 Joseph A. McMillan (b)(7)(C)
Assistant Inspector General
for Investigations

SUBJECT:

POTENTIAL IMPROPER STORAGE OF OFFICIAL NRC
ELECTRONIC DOCUMENTS (OIG CASE NO. 15-021)

Attached is a revised cover memorandum pertaining to a Report of Investigation involving potential improper storage of official NRC electronic documents. The report was previously addressed to the Executive Director for Operations and is being reissued to the NRC Chairman because it pertains to an employee assigned to the Office of International Programs. Both the report and exhibits are unchanged.

CONTACT:

(b)(7)(C)

OIG

Attachment: As stated

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OFFICE OF THE
INSPECTOR GENERAL

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 30, 2015

MEMORANDUM TO: Chairman Burns

FROM:


Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL IMPROPER STORAGE OF OFFICIAL NRC
ELECTRONIC DOCUMENTS (OIG CASE NO. 15-021)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation pertaining to potential improper storage of official NRC electronic documents. The report was previously addressed to the Executive Director for Operations and is being reissued to you because it pertains to an employee assigned to the Office of International Programs. Both the report and exhibits are unchanged.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the Report of Investigation nor its exhibits may be placed in ADAMS without the written permission of the OIG.

Attachment: Report of Investigation w/ exhibits

cc: (b)(7)(C) OGC w/ exhibits
(b)(7)(C) ADM (b)(7)(C) w/o exhibits

CONTACT: (b)(7)(C) OIG

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Distribution:

File Location:

(b)(7)(C), (b)(7)(E)

(b)(7)(E)

Case No.15-21

Historical File

Magnum

OIG/AIGI	OIG/AIGI	(b)(7)(C)		OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)				(b)(7)(C)	J. McMillan	D. Lee	H. Bell
				10/2/15	10/2/15	10/2/15	10/2/15

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

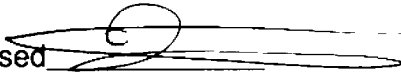
WASHINGTON, D.C. 20555-0001



OFFICE OF THE
INSPECTOR GENERAL

March 1, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Senior Special Agent, (b)(7)(C)

SUBJECT:

FALSE INFORMATION PROVIDED TO OI DURING ITS H&I
INVESTIGATION OF LICENSEE (OIG CASE NO. 15-24)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was based on an allegation from (b)(7)(C) an Indian Point Energy Center (IPEC) employee, that IPEC managers provided false information to the NRC Office of Investigations (OI) during an OI investigation into (b)(7)(C) allegation that IPEC discriminated against him for raising safety concerns. (b)(7)(C) provided two specific examples from OI investigation report, case number 1-2012-045. He also raised a question as to why NRC Region I (RI) administratively closed a different allegation he had raised (RI-2014-A-0015) and requested that NRC continue the investigation.

Findings

OIG determined that the investigation conducted by RI's Office of Investigation into (b)(7)(C) allegations was not inadequate.

OIG learned through its review of OI's Investigative Report, Case No. 1-2012-045 (this report reflects the results of OI's investigation into RI's allegation number RI-2012-A-0040), that based on the totality of the documentation and testimony obtained during its investigation, OI found insufficient evidence to conclude that (b)(7)(C) was

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discriminated against for raising safety concerns. With regard to the examples provided by (b)(7)(C) OI discovered that although IPEC management could not produce evidence that (b)(7)(C) had been unprofessional with vendors, he was unprofessional with IPEC staff during his rating period, which placed him on a Performance Improvement Plan (PIP). Furthermore, the issues that (b)(7)(C) brought up regarding the finance office did not fall under NRC's purview.

OIG also found that RI administratively closed allegation RI-2014-A-0015 after it was informed by the Department of Labor (DOL) that since (b)(7)(C) elected to proceed in the U.S. District Court, the Occupational Safety and Health Administration (OSHA) (a DOL agency) was dismissing his complaint. OIG learned that RI had informed (b)(7)(C) that they would maintain his file open to monitor DOL decisions. (b)(7)(C) was also informed by RI that he did not articulate a pattern of facts as described in 10 CFR 50.7, Employee Protection, and therefore did not have a prima facie case of discrimination.

Basis for Findings

Background

On December 20, 2013, OI issued an investigative report (OI Case No. 1-2012-045) titled "Discrimination Against a (b)(7)(C) for Having Raised Safety Concerns," reflecting the results of OI's investigation to determine whether (b)(7)(C) a (b)(7)(C) at IPEC, was discriminated against for raising safety concerns. (b)(7)(C) had alleged that after raising safety concerns to IPEC security management, his 2011 job performance was rated as unsatisfactory, which placed him on a PIP and subsequently affected his salary and bonus. The report stated that based on the evidence developed during the course of the investigation, OI did not conclude that (b)(7)(C) was discriminated against for raising safety concerns.

On March 18, 2014, (b)(7)(C) NRC RI, wrote to (b)(7)(C) (reference number RI-2014-A-0015) in reference to four email messages (b)(7)(C) had sent to OI RI in February and March of 2014, in which (b)(7)(C) asserted that IPEC had continued a retaliation campaign against him for previously engaging in protected activity. The letter said (b)(7)(C) had stated he had been offered a position, which he knowingly accepted, without being told it would be too physical for his Americans with Disabilities Act (ADA) protection and he was not even offered an interview for another position that he had performed while in the security organization. In the March 18, 2014, letter, (b)(7)(C) informed (b)(7)(C) that NRC was not initiating an investigation into his assertion of alleged ongoing discrimination because he had not articulated a pattern of facts to satisfy the elements of 10 CFR 50.7, Employee Protection, and NRC would not initiate an investigation into his assertion of

discrimination because the job/responsibilities that (b)(7)(C) voluntarily assumed “do not constitute an adverse action (in the form of constructed discharge).” In addition, (b)(7)(C) wrote that the issues raised in (b)(7)(C) emails “do not constitute new NRC protected activities.” However, NRC wrote that it had received a discrimination complaint that (b)(7)(C) had filed with DOL against Entergy (IPEC licensee) and would therefore maintain this file (RI-2014-A-0015) open to monitor DOL decisions.

On June 26, 2014, (b)(7)(C) wrote to (b)(7)(C) (reference number RI-2012-A-0040) transmitting the results of a RI follow-up to a concern (b)(7)(C) raised pertaining to OI Case No. 1-2012-045. Enclosure 1 to the letter reflected NRC’s conclusion that NRC was unable to obtain sufficient evidence to conclude that (b)(7)(C) was discriminated against for raising safety concerns. Enclosure 1 also included the following with regard to (b)(7)(C) downgraded performance rating:

... your manager testified that you received a lower rating because of complaints about your unprofessional behavior when dealing with vendors and with employees of the IP finance department. The IP (b)(7)(C) (b)(7)(C) testified that you had interacted with her staff on three occasions in the rating period during which you exhibited loud, demanding, and unprofessional behavior. The (b)(7)(C) stated that she complained to your management after each occurrence. Regarding unprofessional behavior with vendors, IP management was unable to provide any documentation related to your unprofessional behavior towards vendors.

In a letter to (b)(7)(C) dated August 20, 2014, (reference number RI-2012-A-0040), NRC responded to a July 25, 2014, email (b)(7)(C) had sent to (b)(7)(C) that “indicated that statements made to the NRC by the (b)(7)(C) and the (b)(7)(C) (b)(7)(C) regarding your ‘unprofessionalism’ were false, and as a result, you stated that these individuals provided false information to the NRC during an investigation.” In the August 20, 2014, letter, (b)(7)(C) (b)(7)(C) stated that the (b)(7)(C) and (b)(7)(C) statements regarding (b)(7)(C) “unprofessionalism” were just a portion of testimonial and documentary evidence that NRC had considered to reach its conclusion and stated that “corroborating evidence was obtained regarding your unprofessional behavior” and it elaborated briefly on details that led to NRC’s conclusion.

The letter also noted that interviewees are placed under oath and their testimony is transcribed to ensure that testimonial evidence gathered during an investigation is factual and based on the exact statements made by the interviewees. (b)(7)(C) was informed that if interviewees are willing to perjure themselves, evidence to the contrary would have to be uncovered to substantiate that this had occurred. The letter said NRC

stood by its previous conclusion that it was unable to obtain sufficient evidence to conclude (b)(7)(C) had been discriminated against for raising nuclear safety concerns and “absent specific evidence from you that individuals provided false information to OI investigators, we plan no further action on this matter.

On March 9, 2015, OSHA sent a letter to (b)(7)(C) OI, informing her that as a result of (b)(7)(C) electing to proceed with his case in Federal Court, rather than before the Secretary of Labor, his complaint before OSHA was dismissed.

In a letter to (b)(7)(C) from NRC, dated March 10, 2015, (b)(7)(C) was informed that NRC planned no further action in his discrimination allegation and had administratively closed the file since it was dismissed by OSHA.

Review of OI Case

OIG’s review of OI Investigative Report Case No. 1-2012-045 indicated that OI conducted interviews with IPEC (b)(7)(C) managers regarding (b)(7)(C) job performance. The report indicated that (b)(7)(C) had received an Accountability Letter for failing to maintain his qualifications in accordance with EN-TQ-212 expectations, which dealt with his Control of Safeguards Information Qualification. This letter was issued to (b)(7)(C) on June 8, 2011. Furthermore, the report had indicated that (b)(7)(C) supervisor (b)(7)(C) was having performance issues with (b)(7)(C) which caused (b)(7)(C) to be put on a PIP to which (b)(7)(C) agreed.

The report further indicated that (b)(7)(C) had also been unprofessional with a vendor but that (b)(7)(C) could not produce any documentation substantiating this claim. OIG learned through communications with the RI (b)(7)(C) that OI was later contacted by an IPEC attorney who provided the name of the possible vendor with whom (b)(7)(C) engaged unprofessionally. OIG learned that OI interviewed the vendor, who characterized (b)(7)(C) behavior with him as aggressive, but did not state that (b)(7)(C) was unprofessional in his dealings with him. The report also noted that the (b)(7)(C) had reported to (b)(7)(C) that (b)(7)(C) was unprofessional with her staff on three instances. (b)(7)(C) was interviewed by OI investigators and stated that (b)(7)(C) had exhibited loud, demanding, and unprofessional behavior towards her in approximately March 2011, and that this behavior had continued into 2012 when (b)(7)(C) was dealing with her staff. The report indicated that (b)(7)(C) in all three instances had reported his behavior to (b)(7)(C). She further communicated to the OI investigator that in all three cases (b)(7)(C) intentions were good but his interactions with people needed improvement.

Interviews

On May 19, 2015, (b)(7)(C) AES, RI informed OIG that (b)(7)(C) initial complaint of ongoing discrimination (R-2014-A-0015) was found not to be a prima facie case of discrimination by the regional counsel as explained to (b)(7)(C) in their acknowledgement letter to him dated March 18, 2014, and as a result it was not investigated. (b)(7)(C) further communicated to OIG that RI never opened an investigation and left his file administratively open only to monitor the DOL process. When DOL dismissed (b)(7)(C) case, RI formally closed their file in accordance with their process.

(b)(7)(C) told OIG that as of May 19, 2015, his office had not received any new information or evidence of wrongdoing as claimed by (b)(7)(C) in his email, dated July 25, 2014.

OIG learned in communication with (b)(7)(C) that (b)(7)(C) issues related to the finance department (i.e., gas card, fuel bills, security vehicles having to be parked for lack of fuel and improper payment of New York sales tax) did not fall under NRC purview. These issues brought forth to OIG by (b)(7)(C) were never brought forth to RI by (b)(7)(C).

On October 8, 2015, OIG contacted (b)(7)(C) regarding this investigation. (b)(7)(C) related he had not provided any new information concerning this allegation to the NRC since communicating with them in 2014. (b)(7)(C) stated he understood that his case with DOL was closed since he decided to pursue his allegation of discrimination in Federal Court and that RI formally closed as a result of DOL dismissing the case. (b)(7)(C) stated that the court ordered mediation on his claims, and that he is currently going through mediation of his allegations that he had reported to NRC to include his discrimination claim. (b)(7)(C) had no additional information regarding his original allegation other than that OI should have reviewed three headquarters corporate responses he wrote regarding waste/misuse of funds concerning fuel cards and other matters. He suspected that the (b)(7)(C) lied to OI when interviewed regarding his unprofessionalism because the corporate responses he wrote involved areas for which the (b)(7)(C) was responsible. (b)(7)(C) also told OIG he had submitted a new, different allegation to NRC on August 14, 2015, regarding a "nuclear safety concern." He reported that the licensee used a clamp in vapor containment that was not designated as a safety grade item. He also said that on October 6, 2015, he went to the (b)(7)(C) to report that he is experiencing retaliation for having reported the safety concern. He is waiting to see what, if any, NRC will take regarding his new allegations.

Conclusion

Because OIG did not identify evidence of inadequacy in OI Region I's investigation into (b)(7)(C) allegations or in its administrative closure of a different allegation from (b)(7)(C) after (b)(7)(C) opted to pursue the matter through OSHA, it is recommended that this matter be closed to the files of this office.

File Location: (b)(7)(E)
(b)(7)(E)

Distribution

Case File 15-024

Historical File

Magnum

OIG	OIG	OIG	OIG	OIG	OIG
(b)(7)(C)		(b)(7)(C)	J. McMillan	D. Lee	H. Bell
2/10/16	2/29/16	2/29/16	3/1/16	3/17/16	3/17/16

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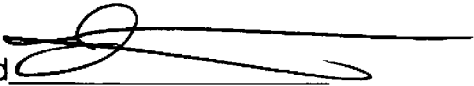


OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

August 3, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, (b)(7)(C)

SUBJECT:

CONCERNS REGARDING U.S. NUCLEAR REGULATORY
COMMISSION MANAGEMENT OVERSIGHT
PERTAINING TO POTENTIAL INSPECTION FINDINGS AT
(b)(7)(C) (OIG CASE NO. 15-26)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted this investigation based on an anonymous allegation that (b)(7)(C) (b)(7)(C) Division of Reactor Projects (DRP), Region II (RII) made the following statement to (b)(7)(C) at (b)(7)(C) in violation of the NRC Reactor Oversight Process (ROP): "Because VC Summer is a good running plant, that if the licensee places the findings into the corrective action program (CAP), that the (b)(7)(C) do not need to document Green findings."

Potential violations relevant to this allegation are provisions in 5 CFR 2635, Standards of Conduct, and NRC ROP.

Findings

OIG could not substantiate whether or not (b)(7)(C) instructed (b)(7)(C) not to document Green findings. Although OIG found that three (b)(7)(C) said (b)(7)(C) told them not to document Green findings under certain circumstances, two other (b)(7)(C) said they did not receive such instruction from (b)(7)(C). In addition, a branch chief who sought clarification from (b)(7)(C) conveyed to (b)(7)(C) that (b)(7)(C) intent had been for inspectors not to spend a lot of time on minor issues and, if a finding is greater than minor (i.e., Green), to call it and move on. (b)(7)(C) maintained to OIG that he never told (b)(7)(C) not to document Green findings; rather, his message was that in cases where (b)(7)(C) could not decide whether a finding was minor or Green, to make a decision and move on. OIG noted that none of the (b)(7)(C) who said (b)(7)(C) instructed them not to document Green findings under certain circumstances followed this instruction. OIG briefed Region II management concerning the apparent misunderstanding of guidance related to Green findings. OIG learned that the Office of Nuclear Reactor Regulation (NRR) is establishing new guidelines for determining what is minor or more than minor.

Basis for Findings

NRC Inspection Manual Chapter 0612, "Power Reactor Inspection Reports," provides guidance on documenting power reactor inspections and findings. It states that a minor violation is a violation associated with a minor performance deficiency, does not warrant enforcement action, and is not normally documented in inspection reports. A Non-Cited Violation (NCV) is a finding that is characterized as Green (very low safety significance). Such findings are documented as violations, but are not cited in notices of violation, which normally require written responses from licensees.

OIG's review of information contained in NRC's Digital City – Dynamic Web Page, for the 5-year time period of May 13, 2010, to May 13, 2015, identified that Region II issued 855 Green NCVs, compared to 735 in Region I; 1,131 in Region III; and 1,539 in Region IV.

NRC Staff Interviews

(b)(7)(C) told OIG in May 2015 that (b)(7)(C) told him in April 2015 during a plant visit, and in the presence of another (b)(7)(C) that if we (b)(7)(C) were "to identify a performance deficiency that was more than minor (Green), and the licensee had placed the issue under a corrective action program, we could just let it go." (b)(7)(C) stated (b)(7)(C) was not referring to a specific issue, but was talking about future

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performance deficiencies. However, (b)(7)(C) said he did not follow (b)(7)(C) instructions to not document Green findings if the licensee was putting the performance deficiency in the CAP. (b)(7)(C) stated that he informed his supervisor, (b)(7)(C) (b)(7)(C) DRP, RII, of the conversation he had with (b)(7)(C). He relayed that he told (b)(7)(C) that he challenged (b)(7)(C) on that comment, and that that was the reason that the Government Accountability Office report came out, and that this kind of philosophy is what leads to a reduction in Green findings by (b)(7)(C) and it would mean not following process.

(b)(7)(C) told OIG that (b)(7)(C) was giving (b)(7)(C) counseling, and was just trying to reiterate Region II's philosophy on how to handle issues and approaches to being as efficient as possible, and how to document things. He stated that he was in the room when (b)(7)(C) stated, "If they (b)(7)(C) put something in the corrective action program, you know, and it's a Green issue, we shouldn't even write it up." (b)(7)(C) stated that what (b)(7)(C) said is counter to what the ROP says. (b)(7)(C) stated he has never followed (b)(7)(C) instructions to not document Green findings if the licensee was putting the performance deficiency in the CAP.

(b)(7)(C) told OIG in August 2015, that he met with (b)(7)(C) on March 2, 2015, at (b)(7)(C) and (b)(7)(C) told him that because there were going to be lean times with the agency, (b)(7)(C) needed to prioritize the work and use his resources efficiently, and that with respect to Green findings, as long as the licensee was putting the performance deficiency in its CAP, he did not need to document the finding. He further stated that (b)(7)(C) stated that if the issues were Greater Than Green, he needed to focus on the significant issues. (b)(7)(C) told OIG he was not following the direction of (b)(7)(C) to not document any future green findings if the licensee was putting the performance deficiency in its CAP.

He stated that they were notified by the VC Summer (b)(7)(C) about what (b)(7)(C) had told them about not documenting Green findings and that he, too, was dumbfounded by what (b)(7)(C) had reportedly related regarding green findings.

(b)(7)(C) said that (b)(7)(C) NRR, had attended the Integrated Counterpart meeting in June 2015 and made similar but not identical remarks regarding prioritization and how the agency needed to focus its resources. He said she did not explicitly state not to document Green findings, but she was supporting this prioritization.

[Investigative Note: OIG's review of (b)(7)(C) presentation during the RII Security Counterpart seminar indicated that (b)(7)(C) message to the audience was that

inspectors should not spend much time on minor findings when there are major issues that they could be inspecting. (b)(7)(C) stated in the video that due to budget constraints, inspectors need to work on major issues and not spend a lot of time on minor issues.]

He stated that he is not following (b)(7)(C) guidance and is not aware of anyone else following (b)(7)(C) direction regarding Green findings. He was not aware if NRR was planning to change the chapter manuals to reflect not documenting Green findings. He stated that his branch chief, (b)(7)(C) is aware of the verbal guidance that (b)(7)(C) has given to the resident inspectors. He stated that they have not received any guidance from (b)(7)(C) or (b)(7)(C) regarding Green findings.

(b)(7)(C) stated that she met with (b)(7)(C) in March 2015 at (b)(7)(C) and he did not make any statements to her regarding Green findings. She stated that it was not until June 2015, while attending the Region II Spring 2015 Resident and Regional Inspectors - Integrated Counterpart Meeting (June 2-4), that the topic of Green findings came up. She said during a presentation by (b)(7)(C) the audience of inspectors were told that inspectors should be looking at issues of concern greater than minor and should not be too concerned with minor performance deficiencies if the licensee places them in the CAP.

(b)(7)(C) told OIG that (b)(7)(C) had mentioned to him that he had a visit from (b)(7)(C) about a couple or few weeks before he (b)(7)(C) visited (b)(7)(C) in the mid-April 2015 timeframe. He stated that at that point the take-away (b)(7)(C) had from (b)(7)(C) was, "don't focus a lot on issues if they are going to end up just being Green, that we really want to focus on the high-risk issues that are going to be Greater Than Green."

(b)(7)(C) said he offered to (b)(7)(C) that he would go back to the region and talk to (b)(7)(C) directly about what he meant by those kind of statements, and then get back to (b)(7)(C) on what he meant. (b)(7)(C) said that he responded back to (b)(7)(C) and informed him that what (b)(7)(C) meant by that statement was, "Don't spend a lot of time on minor issues and if it's greater or more than minor, then call it and move on." He said he also told (b)(7)(C) that he never heard (b)(7)(C) say, "if it is Green, don't worry about it."

He advised that during division meetings, the issue of Green findings had come up periodically in the context that "we don't want to spend a lot of time – if we know it is green, then we don't need to spend a lot of time pushing, you know, to further that."

(b)(7)(C) said that they are not neglecting Green findings and are still going through the same ROP process, but that they are just not spending extra time on determining what is going to be a Green finding.

(b)(7)(C) told OIG that while attending the counterpart meeting in June 2015, (b)(7)(C) made comments about Green findings in the context of do not spend a lot of time on Green findings. He said he thought people perceived her comments the wrong way. He said that the whole intent was if one looks at the ROP process, there are some things that are more safety significant than others. Furthermore, he heard that some residents took that as do not write any Green findings.

(b)(7)(C) stated that (b)(7)(C) on his visits to (b)(7)(C) never discussed Green findings with him. (b)(7)(C) relayed his personal opinion is that Green findings are very low safety significance, but they are data points.

(b)(7)(C) told OIG that RII DRP has had a lot of discussion over whether a performance deficiency is minor versus Green, and this takes up a lot of their time. So, they have been trying to go through what the criteria means for minor or more than minor. He stated that when he goes to plant sites to talk to (b)(7)(C) about their weekly inspections, he tells them that they should pick those things that are most significant, those that impact public health and safety the most.

He said he did not want (b)(7)(C) wasting their time looking at issues of lower significance when there are things of higher significance. He stated that when (b)(7)(C) are looking at something that is on that threshold between minor and more than minor, he wants them to pick one. He wants them to make a decision because they are spending money and time in an area where it really does not matter that much; and they need to make a call and move on.

(b)(7)(C) said he never told one of his (b)(7)(C) "that if it was a good running plant, don't bother documenting the Green findings." Instead, (b)(7)(C) said he conveyed that if the (b)(7)(C) is at a site, and it is a good operating plant, and they are a very responsive licensee, and they have a good, healthy corrective action program, then why would the inspector question whether an issue is minor? Why are they so concerned that if you do not make it Green, it is not going to get fixed? He stated that it would be different if the region "had concerns about the licensee's corrective action program," and if the licensee "was not a good performing licensee....But if you are at a site where that is not the case,...it doesn't matter to me whether you call it Green or whether you make it more than minor. Do it and move on. We are spending time on issues that are very

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low safety significance when there is a whole lot of other things out there that we can be looking at.”

In addition, (b)(7)(C) told OIG that (b)(7)(C) look at less than 1 percent of the activities at their sites. He said that (b)(7)(C) have many options on what to inspect. He wants them to pick issues that are important and not to waste time on issues that are not. If it is a good CAP, and the issue is placed in the CAP, and they are confident it is going to be fixed, then they should move on. (b)(7)(C) stated that he never told any (b)(7)(C) not to document Green findings. His message to them was to make the call on the finding and move on.

(b)(7)(C)
(b)(7)(C) NRR, told OIG that once a (b)(7)(C) samples and screens an item that was placed in the licensee's CAP, he/she does not have the option to not issue an NCV or not to document the item if it is more than minor. She also stated that the Office of Enforcement delegated its powers of enforcement to the region's division directors and branch chiefs. Resident inspectors do not have the authority to issue violations.

(b)(7)(C) told OIG that a (b)(7)(C) does not have flexibility in the issuance of Green findings because once the (b)(7)(C) samples and screens an issue, and it screens Green in the ROP flow chart, then it must be documented. She stated that the only time that an (b)(7)(C) does not have to document a Green finding is if the licensee self-identified the item of concern and it would have been a non-cited violation.

(b)(7)(C) said the (b)(7)(C) are to look at samples that are risk significant and meet the requirements of the baseline inspection program. She said that (b)(7)(C) are not to be mining the CAP to see how many violations they can write up against the licensee since the CAP is a voluntary program under the ROP. (b)(7)(C) are supposed to be looking for risk significant and problematic issues that would jeopardize the safety and adequate protection of the public. She further stated that not all items placed in the CAP are safety related or have to do with the safe operation of the reactor. She stated that some items placed in the CAP could relate to Occupational Safety and Health Administration issues.

(b)(7)(C) said that directing a (b)(7)(C) not to document a Green finding is contrary to the ROP and whether or not a (b)(7)(C) made such a statement would depend in the context of the conversation and how that message was received by the (b)(7)(C). As to why Region II had less green findings than other regions, (b)(7)(C) stated it could be based on the threshold used by that region in screening the issue of concern or performance deficiency. She said that NRR is trying to work on that

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issue by establishing new guidelines for (b)(7)(C) to determine what is minor or more than minor.

During separate meetings in November 2015, OIG briefed then-incoming Region II

(b)(7)(C)

and (b)(7)(C) on the investigation. OIG advised Region II (b)(7)(C) of the apparent perceptions and/or misunderstanding that some inspectors had pertaining to Green findings.

Because OIG did not substantiate misconduct by (b)(7)(C) and NRC Region II senior management was briefed on the results of this investigation, it is recommended that this case be closed to the files of this office.

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Distribution:

Case File 15-026

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OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG <i>EA</i> J. McMillan	OIG D. Lee	OIG H. Bell <i>HB</i>
07/8/16	07/8/16	07/9/16	07/8/16	7/28/16	8/3/16	1/16	8/4/16

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 28, 2015

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

(b)(7)(C)

FROM:  Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL HARASSMENT OF NRC EMPLOYEE BASED ON
A PERSONAL CONDUCT ISSUE (OIG CASE NO. 15-027)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation (ROI) pertaining to an anonymous letter distributed to female NRC employees at NRC headquarters containing derogatory personal comments about an Office of Nuclear Reactor Regulation employee. A copy of the ROI with exhibits is also attached for you to provide to the Office of the Chief Human Capital Officer.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the ROI nor its exhibits may be placed in ADAMS without OIG's written permission.

Attachments: ROI w/ exhibits (plus one copy)

cc: (b)(7)(C) OGC/ (b)(7)(C) w/exhibits
(b)(7)(C) ADM/ (b)(7)(C) w/exhibits

CONTACT: (b)(7)(C) OIG, (b)(7)(C)

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OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



Potential Harassment of NRC Employee
Based on a Personal Conduct Issue

OIG Case No. 15-027

(b)(7)(C)	(b)(7)(C)
(b)(7)(C)	(b)(7)(C)
Special Agent	Team Leader
(b)(7)(C)	JR 12/18/15
Joseph A. McMillan, Assistant Inspector General for Investigations	Date

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STATUTES, REGULATIONS, AND POLICY

5 CFR, Section 735.203 – What are the Restrictions on Conduct Prejudicial to the Government?

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

SUBJECT

(b)(7)(C)

(b)(7)(C)

Office of Nuclear Reactor Regulation (NRR)
U.S. Nuclear Regulatory Commission (NRC)

ALLEGATION

The Office of the Inspector General (OIG), NRC, initiated this investigation after learning that on May 8, 2015, and May 11, 2015, respectively, two NRC female employees at NRC headquarters in Rockville, MD, found an anonymous letter in their workstation containing derogatory personal comments about (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

NRR.

FINDINGS

OIG found that (b)(7)(C) created and distributed a document containing inflammatory and derogatory comments about (b)(7)(C) to approximately 5 to 10 female headquarters employees. For example, the document referred to (b)(7)(C) as a "known wife beater" and stated, "please stay away from him and do not let yourself get in a position where you are alone with him (i.e., a conference room, closed office, or elevator)."

BASIS FOR FINDINGS

Interviews of Witnesses

(b)(7)(C) NRR, told OIG that on May 8, 2015, at approximately 10:30 a.m., she found a letter on her chair in her cubicle, located at (b)(7)(C) in the One White Flint North (OWFN) building. OIG reviewed the note, which stated the following:

Ladies,

I wanted to make you aware of a possible safety threat. A known "wife beater" has been relocated from OIP to (b)(7)(C) and is sitting on your floor and/or and working in (b)(7)(C). He was arrested and charged with domestic assault last year, but found not guilty (I've been told because his wife did not testify against him). The arrest for assaulting his wife (he tried to strangle her) is a matter of public record, so I'm not disclosing anything the general public wouldn't already know if they read the local Frederick County papers or searched online.

His name is (b)(7)(C)

I believe that any man who assaults his wife is dangerous and has anger issues especially when interacting with women. For your safety please stay away from him and do not let yourself get in a position where you are alone with him (i.e., a conference room, closed office, or elevator).

I am sending you this letter anonymously, because I fear for my safety if he found out I had warned you about him. Again, this is all on public record, if you choose to corroborate the information.

(b)(7)(C) showed the letter to (b)(7)(C) and informed her supervisor, (b)(7)(C).
(b)(7)(C)

(b)(7)(C) did not know who wrote the letter and did not know of anyone else who received a similar letter.

(For further details, see Exhibit 1.)

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(b)(7)(C)
(b)(7)(C) NRR, told OIG she found a letter concerning (b)(7)(C) the morning of May 11, 2015, on her chair inside her cubicle located in (b)(7)(C) OWFN.

(For further details, see Exhibit 2.)

Interview of (b)(7)(C)

(b)(7)(C) said he was arrested in July 2014 for assaulting his current wife, (b)(7)(C). (b)(7)(C) He self-disclosed the information to the NRC (b)(7)(C) in accordance with NRC requirements. He was assigned to work at home in July 2014 as a result of the arrest. He was found not guilty in November 2014 and subsequently allowed to return to working at NRC headquarters in May 2015. Prior to this incident he was working on the fourth floor of OWFN and as of May 2015, he was assigned to the seventh floor of OWFN.

On May 8, 2015, (b)(7)(C) received a call from his supervisor, (b)(7)(C) who advised him that a female employee in (b)(7)(C) office found a letter on her chair that day addressed to "Ladies" and alleging (b)(7)(C) was a "wife beater" and women working with him should stay away from him for their own safety.

OIG asked (b)(7)(C) who he thought might have written the document/flyer. He provided names of three NRC employees: (b)(7)(C) Office of International Programs (OIP); his former wife, (b)(7)(C), NRR; and (b)(7)(C) NRR.

(b)(7)(C) said he and his current wife (b)(7)(C) got into an argument in July 2014, but reconciled shortly after. They have since been on vacations together and have had no problems.

(b)(7)(C) said that contrary to information in the letter, he never beat his wife. He said he and (b)(7)(C) got into an argument in July 2014, but reconciled shortly after.

They have since been on numerous vacations together and have had no problems.

(b)(7)(C) feels that someone distributing documents/flyers in the workplace stating that he is a "wife beater" is false and inappropriate and he felt harassed by it. He said it will affect his working relationship with people because they will have a preconceived opinion of him.

(This report refers to (b)(7)(C) as (b)(7)(C) and to his current wife and former wife by their first and last names.)

(For further details, see Exhibits 3 and 4.)

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Interview of (b)(7)(C)

(b)(7)(C) OIP fourth floor in OWFN, told OIG she had no involvement with the letter concerning (b)(7)(C) was (b)(7)(C) supervisor prior to May 2015. In July 2014, (b)(7)(C) learned that (b)(7)(C) was arrested for a matter outside of the workplace, which was assault on his wife. (b)(7)(C) was instructed to work from home until further notice. (b)(7)(C) was assigned duties and was required to check in with (b)(7)(C) daily via email.

In October 2014, (b)(7)(C) issued a Notice of Proposed Removal to (b)(7)(C) for performance issues. (b)(7)(C) continued to work from home until May 2015 pending the outcome of the proposed removal.

(For further details, see Exhibit 5.)

Interview of (b)(7)(C)

(b)(7)(C) divorced from (b)(7)(C) since 2010, told OIG that she was aware that her friend, (b)(7)(C) had informed some of the women on the seventh floor that (b)(7)(C) was moving to their location, and that they should be concerned for their safety. (b)(7)(C) and (b)(7)(C) worked on the seventh floor of OWFN. (b)(7)(C) said she supported the action taken by (b)(7)(C) because she agreed the women should be informed for their safety. (b)(7)(C) thought that (b)(7)(C) had delivered a message to the women via email or told them in person. She was unaware that (b)(7)(C) left a letter on their chairs. (b)(7)(C) believes (b)(7)(C) is dangerous because he was abusive to her during their marriage years ago. She said she and (b)(7)(C) share custody of their two children, and she interacts with him because of their children. Although the divorce was finalized in 2010, she, (b)(7)(C) and their two children later went on vacations together and stayed in the same hotel room in 2011 and 2012. (b)(7)(C) said she did it for the benefit of their children so that they could experience the vacations together as a family. She stated he recently acted abusive to her at a baseball game their son was participating in. When asked to describe the abusive actions, she said that (b)(7)(C) told her not to roll her eyes at him. She responded saying she did not roll her eyes, and he told her, "oh just shut up."

(b)(7)(C) said (b)(7)(C) learned that (b)(7)(C) was abusive because she told her. (b)(7)(C) said (b)(7)(C) has only met (b)(7)(C) once or twice. (b)(7)(C) said she does not want (b)(7)(C) to get in trouble on her behalf.

(b)(7)(C) said that she also told her supervisor that (b)(7)(C) was abusive to her during their marriage and that women at NRC should be aware. She told her supervisor and others when she learned that (b)(7)(C) was charged with assault in July 2014.

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(b)(7)(C) said (b)(7)(C) has not displayed abusive behavior to her in the workplace at NRC. However, she was told by (b)(7)(C) that (b)(7)(C) displayed anger toward his female supervisor last year.

(For further details, see Exhibits 6 and 7.)

Interview of (b)(7)(C)

OIG showed (b)(7)(C) the letter provided by (b)(7)(C) told OIG she created the letter and distributed copies of it to 5 to 10 female employees. She used a Government printer to print the letters, and distributed them while she was being paid to conduct official Government work.

(b)(7)(C) said she distributed the letter for the safety of the female employees after learning (b)(7)(C) was reassigned to their floor in May 2015. She believed (b)(7)(C) was violent against women based on information she initially learned from her supervisor and (b)(7)(C) stated that her supervisor, (b)(7)(C) called her in July 2014 and informed her (b)(7)(C) was arrested for assault on his current wife (b)(7)(C) and instructed (b)(7)(C) to contact (b)(7)(C) to make sure she and her children were okay. (b)(7)(C) told her she had been physically assaulted by (b)(7)(C) prior to their divorce in 2010.

She said (b)(7)(C) had nothing to do with the letter she distributed, and she did it of her own volition.

(b)(7)(C) stated one reason she was afraid (b)(7)(C) might harm her was because the NRC Active Shooter Training showed one scenario with an estranged spouse coming into the workplace to harm his former wife, and shooting anyone he passed on the way. She was afraid (b)(7)(C) would harm her if he learned she distributed the letters.

(For further details, see Exhibits 8 and 9.)

Coordination with Office of Administration

(b)(7)(C), Office of Administration, told OIG that in approximately July 2014, she learned (b)(7)(C) was arrested. (b)(7)(C) took action by removing his access to classified information. However, she did not remove his access to the building. (b)(7)(C) indicated the decision to place (b)(7)(C) on telework status was primarily made by his former supervisor (b)(7)(C).

(For further details, see Exhibit 10.)

Coordination with the Office of the Chief Human Capital Officer

(b)(7)(C)

(b)(7)(C)

Office of the Chief Human Capital Officer (OCHCO), told OIG he learned that [redacted] was arrested in July 2014. As a result, [redacted] was assigned to work at home. Although the court found [redacted] "Not Guilty" in November 2014, he did not return to the office at that time. This was because a proposal for removal had been issued to [redacted] for failing to perform at a level for which he was being paid, which was GG-15. It took time for the deciding official, [redacted] OIP, to review the proposal and make a final determination. OCHCO also required time to relocate [redacted] to a different supervisor. On May 3, 2015, [redacted] made a final decision to downgrade [redacted] to GG-14. On this same day, [redacted] was allowed to return to the office.

(b)(7)(C)

[redacted] assigned [redacted] to work in OWFN. [redacted] was aware that [redacted] former wife, [redacted] also worked in OWFN. [redacted] did not think this was a problem because he was aware that [redacted] and [redacted] shared custody of their children and met frequently, unsupervised, outside of the workplace, to exchange their children.

(For further details, see Exhibits 11 and 12.)

EXHIBITS

1. Memorandum of Interview, Interview of (b)(7)(C) dated May 12, 2015.
2. Memorandum of Interview, Interview of (b)(7)(C) dated May 13, 2015.
3. Memorandum of Interview, Interview of (b)(7)(C) without attachments, dated May 19, 2015.
4. Memorandum of Interview, Interview of (b)(7)(C) without attachments, dated July 9, 2015.
5. Memorandum of Interview, Interview of (b)(7)(C) dated July 9, 2015.
6. Memorandum of Interview, Interview of (b)(7)(C) dated May 27, 2015.
7. Memorandum of Interview, Interview of (b)(7)(C) dated June 29, 2015.
8. Transcript of Interview, Interview of (b)(7)(C), dated May 28, 2015.
9. Memorandum to File, Addendum to (b)(7)(C) Interview, dated September 2, 2015.
10. Memorandum of Interview, Interview of (b)(7)(C) dated August 21, 2015.
11. Memorandum of Interview, Interview of (b)(7)(C) dated July 1, 2015.
12. Notice of Proposed Removal, dated October 31, 2014.

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File Location: (b)(7)(C), (b)(7)(E)

Distribution

Case File 15-27

Historical File

Magnum

OIG (b)(7)(C)	(b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C) <i>Sop</i> J. McMillan	OIG <i>Lee</i> D. Lee	OIG H. Bell <i>H</i>
12/18/15	12/18/15 <i>J</i>	12/19/15	12/18/15	12/18/15	12/21/15	12/23/15

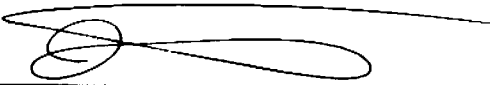
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

March 2, 2016

MEMORANDUM TO: Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)
Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)
Special Agent, (b)(7)(C)

SUBJECT: ALLEGED CIRCUMVENTION OF ALLEGATION REVIEW
BOARD PROCESS BY OFFICE OF INTERNATIONAL
PROGRAMS STAFF (OIG CASE NO. 15-30)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an allegation by (b)(7)(C) Senior Special Agent, Office of Investigations (OI), NRC, that (b)(7)(C) (b)(7)(C) Office of International Programs (OIP), NRC, did not follow agency policy in reporting an alleged wrongdoing by a licensee to the Office of Enforcement (OE) rather than the Allegation Review Board (ARB). Specifically, (b)(7)(C) alleged that (b)(7)(C) had twice bypassed the ARB while handling allegations of exports of nuclear material without proper licensing by energy firm Schlumberger (STC). (b)(7)(C) stated that (b)(7)(C) most recently circumvented the ARB process after STC exported tritium to Iraq without the appropriate license.

Potential violation relevant to this allegation is failing to follow guidance in Management Directive (MD), 8.8, "Management of Allegations."

Finding

OIG did not substantiate misconduct by (b)(7)(C). OIG found that (b)(7)(C) was following a longstanding (b)(7)(C) practice of referring allegations believed to be obvious violations directly to OE instead of to an NRC Office Allegation Coordinator (OAC) so that an ARB could be convened. OIG learned that the allegation was subsequently provided to an OAC and incorporated into an existing OI investigation pertaining to the company. However, NRC later learned it did not have jurisdiction over the matter alleged.

Basis of Findings

MD 8.8, "Management of Allegations," states that an OAC is a designated staff member in a regional or headquarters office who serves as the point of contact for that office regarding the processing of allegations. An ARB is a board established by regional administrators and headquarters office directors to determine the safety significance and appropriate NRC followup for each allegation. MD 8.8 also states that after receiving an allegation, staff in headquarters offices that do not have an OAC shall transfer the allegation to an assigned, responsible OAC in an action office, who shall coordinate and track the actions taken in response to the allegation (e.g., Nuclear Security and Incident Response-related and Office of New Reactors-related allegation processing is coordinated by the Office of Nuclear Reactor Regulation OAC, and OIP-related allegation processing is coordinated by the Office of Nuclear Material Safety and Safeguards [NMSS] OAC).

According to NRC Enforcement Policy, 2.2.5 Export and Import of Nuclear Equipment and Material, NRC will normally take enforcement action for violations of the agency's export and import requirements in 10 CFR Part 110, "Export and Import of Nuclear Equipment and Material."

OIG learned that in 2005, STC self-reported to NRC wrongful exports of nuclear material to Libya, an embargoed nation not permitted to receive radioactive material. (b)(7)(C) presented this matter to an OE panel and violation letters were sent to STC. In 2008, OI opened an investigation into STC in response to a Boston Globe newspaper article reporting that STC had evaded sanctions against Iran, another embargoed country, by sending the nation technology containing nuclear components; that investigation remains open.

In December 2014, OIP staff determined that STC exported tritium to Iraq, also an embargoed country, without the proper license. (b)(7)(C) requested Region IV OE panel time to review this alleged wrongdoing, but did not refer the allegation to (b)(7)(C).

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(b)(7)(C) NMSS OAC, for OIP-related allegation for processing. OI subsequently added this allegation to its original investigation of STC after learning of the matter from Region IV.

(b)(7)(C) told OIG that as the NMSS OAC, she has received allegations against licensees for exporting nuclear materials without the appropriate licenses and exporting materials to embargoed countries. (b)(7)(C) said the office's technical staff determines if the allegation will be routed to OE or the ARB, and (b)(7)(C) is considered part of OIP's technical staff. She believed that if the allegation is a clear violation by a licensee, it may be sent directly to OE, bypassing the ARB process. (b)(7)(C) became aware of the allegation when (b)(7)(C) contacted her about the allegation. She then contacted (b)(7)(C) and provided him an ARB intake worksheet to complete on February 25, 2015.

(b)(7)(C) OE, who authored the Allegation Manual, told OIG that this matter should have been presented to the ARB and could not think of a reason why it was not. (b)(7)(C) said allegations of wrongdoing are to be brought to the attention of the OAC, who will then convene an ARB. He said that (b)(7)(C) is OIP's designated OAC.

(b)(7)(C) Region IV, stated that on February 19, 2015, (b)(7)(C) requested from her, via email, OE panel time regarding the allegation, but the panel never took place, as she was aware that OI Region IV was conducting an investigation into STC and forwarded the email to the OI Region IV (b)(7)(C). She also forwarded the email to Region IV management in the Division of Nuclear Material Safety.

OIG learned that OI ended its investigation into STC's tritium export to Iraq as the matter did not fall under NRC jurisdiction. OIG learned that the tritium was contained within a sealed source and therefore was within the purview of the Department of Commerce (DOC). The DOC subsequently confirmed to OI that STC had not violated any DOC regulations.

(b)(7)(C) told OIG that he was following standard office practice by presenting matters that appeared to be obvious violations for OE panel review, and he believed the allegation against STC appeared to be a "clear cut" violation. (b)(7)(C) said although he knew OI has an active investigation into STC, he brought the matter to the attention of his supervisor, (b)(7)(C) with the belief it would eventually be brought before OI. (b)(7)(C) continued that his current and previous managers have condoned such procedure and that he did not know he was doing anything incorrectly. (b)(7)(C) said he believed the previous matter in which he forwarded an alleged wrongful 2005 STC export to OE was part of a large project in which he had to resolve a backlog of cases.

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(b)(7)(C) OIP, acknowledged that there is a longstanding practice in OIP to submit certain allegations that appear to be obvious violations directly to OE. However, since learning of the allegation made to the OIG, OIP is drafting allegation processing procedures for her branch. Her employees were also mandated to take the iLearn course, Allegation Receipt and Routing. She was also going to have OE provide instruction to her staff on proper procedures in handling allegations.

(b)(7)(C) OIP, stated he was not aware of the longstanding practice in (b)(7)(C) to refer allegation of obvious violations directly to OE. However, he said he is working to assure that branch employees are aware of the allegation process, and that (b)(7)(C) has spoken with (b)(7)(C) about routing allegations to OE versus the ARB [OAC].

Because no misconduct was identified, and OIP is addressing the proper handling of allegations reported to OIP, it is recommended that this case be closed to the files of this office.

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Distribution

Case File 15-30

Historical File

Magnum

OIG	OIG	(b)(7)(C)	OIG	OIG	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
02/22/16	02/22/16	03/29/16	03/22/16	03/2/16	03/7/16	03/16/16

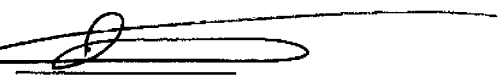
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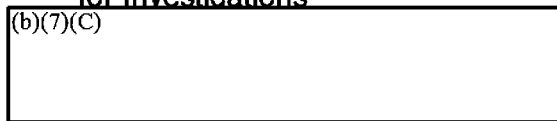
**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

May 19, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

FROM:


(b)(7)(C)


Team Leader, (b)(7)(C)


SUBJECT:

INTRUSION ATTEMPTS INTO RESOURCES
CONNECTED TO THE NUCLEAR REGULATORY
COMMISSION PUBLIC WEB SITE (OIG CASE NO. 15-31)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated a proactive investigation based on a review of network incident reports provided by the Information Security Directorate (ISD), Office of the Chief Information Officer (OCIO), covering May 2014 – April 2015. The (b)(7)(C)  OIG, identified two incidents of network intrusion attempts into the resources connected to the NRC public facing Web site.

The first incident (NRC Incident Number: 2014-0520-001) occurred on May 20, 2014, and involved more than 3.7 million requests from a single Internet Protocol (IP) address to NRC public Agencywide Documents Access and Management System (ADAMS).

The second incident (NRC Incident Number: 2014-0603-001) occurred between May 2 – May 27, 2014, during which an unknown person attempted to compromise a database server connected to the NRC public facing Web site.

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There was no known loss of data from either intrusion attempt and there is no indication that the attacks were successful.

Potential violation relevant to this allegation is 18 USC 1030 - Fraud & Related Activity in Connection with Computers.

Findings

The (b)(7)(E) was unable to determine the identity of the individual(s) in the two intrusion attempts because the IP addresses resolved overseas.

(b)(7)(E)

Basis of Findings

In the first incident, NRC ISD reported that on May 20, 2014, there were over 3.7 million requests from a single IP address to NRC's Public facing Web site. The requests were in the form of thousands of variations of malicious requests made in a systematic manner across the public Web site. The requests appeared to utilize various types of exploits, such as password access and command execution.

In the second incident, NRC ISD reported that there were several unsuccessful access attempts directed against NRC public ADAMS from May 2 to May 27, 2014. The attempts were initially identified by the NRC Security Operations Center review of Intrusion Detection System logs. Further review of logs confirmed the intrusion attempts. Examination of the database server, event logs, and other logs confirmed that none of the attempted attacks were able to penetrate NRC public ADAMS. There is no indication of compromise.

(b)(7)(E) review of the first incident identified that the IP that made more than 3.7 million requests to the NRC public facing Web site on a single day was registered to OVH Hosting Inc., in Montreal, Canada. OIG contacted OVH Hosting Inc., which responded via email that it is renting "unmanaged" servers to its customers. This means that the company had only physical access to the server and could not access the server's content (no root, administrator, or user access). It also stated that most of its customers are resellers, renting an Internet infrastructure from the company in order to sell products to their own customers. No further information was available.

(b)(7)(E) review of the second incident identified that the IP addresses were associated with TOR projects in Germany, and China. TOR is a free software for enabling anonymous communication. TOR directs Internet traffic through a free, worldwide, volunteer network consisting of thousands of relays to conceal a user's location and usage. The ISP indicated that the IP address "operator details" showed the contact name as (b)(7)(C) from Dresden, Germany, with an email address

(b)(7)(C)

(b)(7)(E)

Because the intrusion attempts appeared to have originated overseas, further information is unavailable. Therefore, it is recommended that this case be closed to the files of the office.

Distribution:

Case File 15-031

Magnum

OIG/AIGI	(b)(7)(C)		OIG/AIGI	OIG/AIGI	OIG	OIG
(b)(7)(C)			(b)(7)(C)	J. McMillan	D. Lee	H. Bell
8/12/16	1/16	5/16/16	5/19/16	5/23/16	5/25/16	

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OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

March 30, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)
Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)
Senior Special Agent, (b)(7)(C)

SUBJECT:

POTENTIAL RETALIATION OR HOSTILE WORK
ENVIRONMENT CREATED BY SENIOR NUCLEAR
REGULATORY COMMISSION MANAGER
(CASE NO. 15-037)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an allegation from (b)(7)(C)

(b)(7)(C) that (b)(7)(C) had created a chilled work environment and fear of retaliation within (b)(7)(C). At the time of the allegation, (b)(7)(C) (b)(7)(C) (b)(7)(C).

NRC organizational changes have occurred since the allegation was made. The

(b)(7)(C) and assigned to another individual. (b)(7)(C) continued to serve as (b)(7)(C) and was appointed as (b)(7)(C) of the (b)(7)(C), until his

resignation from the NRC on March 1, 2016. (b)(7)(C) was assigned as (b)(7)(C) (b)(7)(C) until her retirement from Federal service on January 30, 2016.

The potential violation relevant to this allegation is the NRC Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace.

Findings

OIG found that there was a general perception among seven out of eight members of the (b)(7)(C) that (b)(7)(C) had a negative management style that created a chilled work environment and the potential for retaliation, but no one had personally experienced retaliation. OIG found that two out of four of (b)(7)(C) executive team members felt unsupported by (b)(7)(C). One said his staff were afraid to raise issues that (b)(7)(C) did not support and he thought (b)(7)(C) had retaliated against him personally by lowering his appraisal. The other did not think (b)(7)(C) would retaliate, but said (b)(7)(C) did not like people to disagree with him.

Basis of Findings

(b)(7)(C) told OIG that (b)(7)(C) had created a chilled working environment within the (b)(7)(C) and staff. She said (b)(7)(C) and staff were afraid to disagree with (b)(7)(C) during meetings because they were afraid of reprisal, criticism, "shooting the messenger," and other vindictive behavior. (b)(7)(C) said that (b)(7)(C) members felt that the open, collaborative work environment that NRC is so proud of had been choked out within (b)(7)(C). (b)(7)(C) said that morale was greatly impacted by the pattern of behavior and criticisms from (b)(7)(C). She said (b)(7)(C) believed this was due to a feeling of not being supported by (b)(7)(C) and that this environment, in turn, was negatively impacting morale and productivity within (b)(7)(C) and had caused disruption outside the agency as well.

(b)(7)(C) said (b)(7)(C) management decisions were being reversed on a regular basis, causing all of (b)(7)(C) to look bad, and making the (b)(7)(C) feel as though they were being set up for failure. She said (b)(7)(C) had authored a memorandum detailing two instances that they felt contributed to the current chilled work environment. One example was that they were instructed to agree with an OIG audit even though staff felt that the audit report contained inaccuracies, which later were picked up by Senate staffers. The other example was that (b)(7)(C) in an accusatory and blaming tone, berated (b)(7)(C) (b)(7)(C) in a budget meeting and called (b)(7)(C) bad managers, saying how disappointed he was with the budget recommendations, and blaming (b)(7)(C) management for the problem with the base budget. She said (b)(7)(C) was already aware of the issues from the previous year because the issues had been pointed out to him on

multiple occasions. She relayed that this “shooting the messenger” behavior had a demoralizing effect on (b)(7)(C) staff because they had all worked hard to bring the matter of underfunding of the base budget to light.

(b)(7)(C) advised that after receiving information about her annual performance appraisal from (b)(7)(C) and an “Outstanding” Summary Rating, she was later informed by (b)(7)(C) that he (b)(7)(C) was instructed by (b)(7)(C) to drop her Summary Rating to “Excellent.” She said when (b)(7)(C) refused to do this, (b)(7)(C) had (b)(7)(C) performance appraisal lowered.

(b)(7)(C) told OIG it was his understanding that the issues that led to (b)(7)(C) memo included (1) ongoing budget discussions in which (b)(7)(C) felt (b)(7)(C) was not transparent and was blaming them for challenges that had been present for 6 or 7 years already, (2) (b)(7)(C) was not cooperative in trying to resolve the challenges and was not available to the team, and (3) discussions of strategy and budget had not been jointly agreed upon and (b)(7)(C) positions were not taking into account the discussions that had occurred within (b)(7)(C). (b)(7)(C) did not recall any budget meetings where (b)(7)(C) berated him in front of his staff or called (b)(7)(C) “stupid” or used derogatory terms, but he recalled a “very forceful, very emphatic, very abrupt ... discussion with a sense that the leadership team had not been forthcoming in providing the information that he wanted.” (b)(7)(C) said he did not take that as “berating me as an individual, but as challenging the office to do a different or a better job from what we had done.”

(b)(7)(C) said although (b)(7)(C) members had repeatedly expressed concerns to him and (b)(7)(C) about the ability to express their opinion in an open setting with (b)(7)(C) it was never expressed as a fear of retaliation. If they had used the word “retaliation” or the term “chilled environment,” he would have gone to labor relations or OCHCO to convey these concerns. He said that after the budget meeting described above, which (b)(7)(C) knew “didn’t go well,” (b)(7)(C) set up quarterly meetings with (b)(7)(C) to “reach out to the (b)(7)(C)” without (b)(7)(C) or (b)(7)(C) participating. (b)(7)(C) said he had received feedback from (b)(7)(C) that the meetings were not addressing what they wanted to address and there had been no change in the working environment between (b)(7)(C) and (b)(7)(C). However, (b)(7)(C) still did not consider this to meet his definition of a “chilled working environment,” which he characterized as one where someone honestly believes their career is in jeopardy, or that expressing their point of view will be detrimental to their career, their ongoing activities, or their performance assessment. When told by OIG that most of (b)(7)(C) members had told OIG they were afraid to express a different opinion to (b)(7)(C) for fear he would get back at them and it could affect their careers, (b)(7)(C) said he would consider that a chilled environment and that in hindsight he “may have been a bit numb to the symptoms.”

(b)(7)(C) told OIG that (b)(7)(C) relationship with (b)(7)(C) made the office less creative, less productive, and less efficient than it could have been and that this has an impact on the agency's mission. In hindsight, (b)(7)(C) said this could be symptomatic of a chilled work environment.

(b)(7)(C) said his working relationship with (b)(7)(C) was generally cordial, but strained around budgets and strategy choices. He said he did not know whether (b)(7)(C) could be vindictive, but noted he had received a downgraded performance review the prior year following a disagreement with (b)(7)(C) concerning (b)(7)(C) appraisal of (b)(7)(C) and other staff members. He did not know, however, if his downgrade was related to that disagreement and thought (b)(7)(C) would attribute the downgrade to a professional disagreement over approach between (b)(7)(C) and (b)(7)(C) in discussing approach, was referring to what programs should be secured by (b)(7)(C).

(b)(7)(C) told OIG that she wrote the memorandum that was delivered to (b)(7)(C). At the time, she was (b)(7)(C) and was getting a lot of complaints pertaining to unfair treatment. She said staff were complaining a lot about (b)(7)(C) behavior towards (b)(7)(C) because (b)(7)(C) would openly humiliate (b)(7)(C) in front of (b)(7)(C) and badger him in meetings. She also said that following (b)(7)(C) review of an OIG audit on IT governance, they conveyed to (b)(7)(C) that they believed it was premature for OIG to draw conclusions about the effectiveness of an ongoing (b)(7)(C) that was not yet complete and that they wanted to respond to the report by saying it was too early. However, (b)(7)(C) disagreed and told them to respond and not refute the findings. She said, "We were kind of floored by that because we always thought that when you're asked to comment on an IG report, that you tell the truth of what you really think. Not just smile and say, yes sir, may I have another?" But, she said, that is what they did. She said (b)(7)(C) thought they could not trust (b)(7)(C) at all, so she felt obligated to write it all down and report it to (b)(7)(C) and (b)(7)(C) and that this lack of trust was having a negative effect on the morale of the staff, and not just (b)(7)(C). She said that she felt obligated to tell (b)(7)(C) and (b)(7)(C) that they basically needed to take some action because she felt it was negatively impacting the whole office.

(b)(7)(C) stated that one of the issues that resonates with her is a budget exercise that (b)(7)(C) division directors and (b)(7)(C) had with (b)(7)(C) regarding the (b)(7)(C) budget in which (b)(7)(C) was told by (b)(7)(C) that this cut and reinvest exercise was not a valid exercise because you cannot cut anything if he (b)(7)(C) has historically been underfunding his base costs for (b)(7)(C) for years. She stated that (b)(7)(C) reaction was to call them stupid and to inform them that they are all bad managers and did not know about managing money.

OIG questioned (b)(7)(C) and seven other members of (b)(7)(C) regarding their interactions with (b)(7)(C). Although none of the eight (b)(7)(C) members reported personally experiencing retaliation by (b)(7)(C), seven reported significant concerns about (b)(7)(C) leadership, with five specifically describing a chilled work environment and five reporting fear of retaliation by (b)(7)(C) if they disagreed with him. These seven (b)(7)(C) members also (b)(7)(C) described (b)(7)(C) in such ways as unsupportive of (b)(7)(C), mistrusted by (b)(7)(C), not open to differing opinions, and a poor leader. The (b)(7)(C) member interviewed characterized the situation as a "degree of frustration in (b)(7)(C).

Interviews of Other (b)(7)(C)

OIG also interviewed the three other (b)(7)(C) (in addition to (b)(7)(C)) that composed (b)(7)(C) about their interactions with (b)(7)(C). Two of the three (b)(7)(C) and (b)(7)(C) said that (b)(7)(C) did not support them; the third (b)(7)(C) said she felt supported by (b)(7)(C) but was aware of the tension between (b)(7)(C) and (b)(7)(C).

(b)(7)(C) told OIG that when he has challenges, the direction he gets from (b)(7)(C) is work it out. (b)(7)(C) did not think that (b)(7)(C) supported (b)(7)(C) the way it needed to be supported. He said there is a natural conflict between (b)(7)(C) and which should take precedence. He said that some of his staff were nervous and scared to raise issues that (b)(7)(C) did not support because of his position and a fear that it could have a detrimental effect on their careers. (b)(7)(C) said he personally was concerned about (b)(7)(C) retaliating against him and he thought he saw this in his appraisal. He said that the consensus among his (b)(7)(C) and his (b)(7)(C) was that they got limited support from (b)(7)(C) and it was only when the support for an issue came from above (b)(7)(C) that CSO received support. (b)(7)(C) said that (b)(7)(C) seemed to side all the time with the other (b)(7)(C).

(b)(7)(C) told OIG that she did not think anybody liked working for (b)(7)(C). She stated that he did not support (b)(7)(C) management and they were all aware of this. She said when (b)(7)(C) management brought issues to him, he would flip-flop. If another office pushed back, especially the program offices or any of the (b)(7)(C), he would not support (b)(7)(C) staff so (b)(7)(C) would work around him the best that they could. She did not think that (b)(7)(C) would retaliate if (b)(7)(C) management told (b)(7)(C) that they did not feel supported by him, but said (b)(7)(C) could be very moody. She said (b)(7)(C) did not like to hear that you disagreed with him and when you did, he stopped talking to you and turned his back on you. She advised that (b)(7)(C) lack of support impacted (b)(7)(C) in the way it conducted its business. She stated that it took more energy to work the system insofar as working around (b)(7)(C) and working directly with the other (b)(7)(C) and office directors to accomplish their mission.

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(b)(7)(C) told OIG that she felt she received support from (b)(7)(C). She said she understood the tensions and dynamics between (b)(7)(C) and (b)(7)(C) over the past couple of years. She said that the staff did not feel there was a collaborative, good working environment. (b)(7)(C) said that over the past year, there had been tension between (b)(7)(C) and (b)(7)(C) regarding their vision as to what direction or path (b)(7)(C) should take. She also said there had been tension between the two concerning how (b)(7)(C) had rated his direct reports. She said that if it had come to her attention that staff in (b)(7)(C) were afraid of expressing their views, which might be in contradiction to (b)(7)(C) views because of a fear of retaliation, that she would certainly have had her staff conduct an inquiry.

Interview of (b)(7)(C)

(b)(7)(C) told OIG that (b)(7)(C) came to see him in January or February 2015 to convey her views about (b)(7)(C) and (b)(7)(C). (b)(7)(C) said he was surprised at how upset and angry she was about what she claimed (b)(7)(C) was doing. (b)(7)(C) said (b)(7)(C) was not giving the right type of direction to his direct reports, she did not understand his decisionmaking, he was providing an unhealthy environment, that people felt second guessed and that some of his decisions did not reflect careful thought, and he did not have the agency's best interests in mind. She was also very critical of (b)(7)(C) and said that she was the one holding the office together. (b)(7)(C) said (b)(7)(C) also conveyed unhappiness about her performance appraisal, which had been lowered that year by the Performance Review Board (PRB) based on (b)(7)(C) performance, although (b)(7)(C) was not sure whether she conveyed that during this meeting or a separate one.

After the conversation with (b)(7)(C), (b)(7)(C) said he looked more carefully at (b)(7)(C) and (b)(7)(C) relationship with his direct reports. He sat down with him "at midyear for example" and asked what (b)(7)(C) was doing about his low performing organizations. He recalled (b)(7)(C) assessment was that (b)(7)(C) was a somewhat ineffective (b)(7)(C) and that (b)(7)(C) did not work together well. (b)(7)(C) said after the midyear, he remained frustrated that (b)(7)(C) was not making much progress healing the "fight between (b)(7)(C) and (b)(7)(C) and that the two (b)(7)(C) (b)(7)(C) and (b)(7)(C) did not get along with each other. (b)(7)(C) said the fact that they could not cooperate and coordinate together impacted the performance of their organizations and was one of the reasons both were scored down by the PRB. (b)(7)(C) talked with (b)(7)(C) again at various times after the midterm to gauge how things were going between him and the managers. He said (b)(7)(C) response was mixed and he told (b)(7)(C) he had been trying to get (b)(7)(C) to take responsibility and accountability for how (b)(7)(C) was performing. (b)(7)(C) thought (b)(7)(C) should have gotten a different (b)(7)(C) but (b)(7)(C) reported they were making some progress. (b)(7)(C) said that things in (b)(7)(C) were better than they were a year ago, although the progress was not "lightning speed."

(b)(7)(C) said (b)(7)(C) had not communicated with him lately about his relationship with (b)(7)(C) but that about a year before he had “one viral moment” with (b)(7)(C) when (b)(7)(C) told him he was going to meet with (b)(7)(C) one on one to see if he could help things out. (b)(7)(C) said he told (b)(7)(C) “No, you’re not. You’re not going to meet with the (b)(7)(C). You’re going to meet with your (b)(7)(C) and light a fire under him so that he can fix this problem.... Not you. You need to fix him.”

Review of (b)(7)(C) SES Appraisals

According to NRC Yellow Announcement (b)(7)(C) the PRB makes recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level System employees. Twelve Senior Executives served on the PRB in (b)(7)(C) including (b)(7)(C) and (b)(7)(C) served as Co-Chairs of the PRB.

OIG reviewed the 2014 summary ratings for (b)(7)(C) and (b)(7)(C) and found that (b)(7)(C) and (b)(7)(C) summary ratings were lowered by the PRB. Though (b)(7)(C) and (b)(7)(C) summary ratings remained the same, their scores were dropped by the PRB. OIG found that a total of six SES managers had their appraisals lowered (i.e., their scores were lowered, which may or may not have affected their summary rating) by the PRB. The PRB recommended a “Fully Successful” summary rating for both (b)(7)(C) and (b)(7)(C).

Interview of (b)(7)(C)

With regard to (b)(7)(C) performance appraisal, (b)(7)(C) told OIG the agency follows a process to make a determination about performance appraisals, and it is led by the EDO and the General Counsel, in terms of review of all the executives’ SES performance plans and appraisals. He said he rated (b)(7)(C) based on his performance. He said (b)(7)(C) gave (b)(7)(C) a rating that he (b)(7)(C) felt was appropriate for (b)(7)(C) and that that was (b)(7)(C) decision. He (b)(7)(C) signed it, submitted it, and it was approved. (b)(7)(C) relayed that (b)(7)(C) appraisal was reviewed and discussed at length, ad nauseam, by the PRB, along with others within (b)(7)(C), as well as others within (b)(7)(C). The performance appraisal was also independently reviewed by (b)(7)(C) a PRB member.

(b)(7)(C) said the PRB was concerned about the difference in his rating of (b)(7)(C) and (b)(7)(C) rating of his subordinates. The PRB discussed it and ultimately made a decision to lower some ratings. He said that that was a PRB decision, and not his alone.

He said he did not instruct (b)(7)(C) to lower (b)(7)(C) appraisal, but gave him feedback in terms of what he believed to be (b)(7)(C) performance. In the end, as he did with all of his other subordinates, he did not direct (b)(7)(C) to lower it, nor did he tell (b)(7)(C) what specific rating he should give (b)(7)(C).

(b)(7)(C) said it was at least 2 years ago that (b)(7)(C) and (b)(7)(C) expressed concern to him about the perception by (b)(7)(C), in this case the (b)(7)(C) about how things were going in terms of his view of their performance, activities, interactions with (b)(7)(C) and particularly interactions within the organization. Based on this feedback, one action he took was to set up a recurring meeting at their request to meet at least quarterly with (b)(7)(C) to listen to them. The purpose was to create and endorse effectively an open door environment where (b)(7)(C) had the opportunity on a recurring basis to share feedback, share concerns, and hear from him, and for him, most importantly, to hear from them. (b)(7)(C) said this has occurred.

(b)(7)(C) did not recall (b)(7)(C) or (b)(7)(C) ever saying that the working relationship between him and (b)(7)(C) was a chilled work environment. His interpretation was that it was strained.

(b)(7)(C) said it was amazing to him to hear there was a perception among the (b)(7)(C) that they received no support from him. He advised that he has supported them in terms of budget issues, major initiatives, and career growth. He further advised that as (b)(7)(C) he was ultimately responsible for making the right decisions and the right investments for the agency and there were going to be times that staff may not agree with his decisions.

According to (b)(7)(C) in the end, senior managers have to make choices in terms of how and where they ultimately use their scarce resources and somebody is not going to be happy. He has to be able to hear their feedback, their basis, and their justification. He said where he struggled regularly was the leadership staff's ability to clearly articulate the basis for why an investment needed to be made, the budget, and the budget impact.

(b)(7)(C) said that on a regular basis, (b)(7)(C) consistently struggled in terms of clearly explaining why certain investments were important.

(b)(7)(C) said that he would define a chilled work environment as an absolute fear of being able to speak up. When asked, "If the leadership team feared speaking up, would you say that was a chilled work environment?" (b)(7)(C) responded, "I would say it was a strained work environment. I won't use a chilled work environment." When (b)(7)(C) was informed that he just identified a chilled work environment as an absolute fear of being able to speak up, he responded by stating, "I think it's strained because it wasn't -- going back to the things I said earlier. There are individuals within the organization that felt very comfortable to speak up so I'm not making an absolute statement."

(b)(7)(C) stated that since (b)(7)(C) he had been working with an outside consultant in improving the trust between the leadership and executive teams and himself. He stated that he was happy with the results of the offsite team building they held and that the response from the leadership team was that it was a great start.

Conclusion

Because OIG did not identify any retaliation by (b)(7)(C) and he is no longer an NRC employee, it is recommended that this case be closed to the files of this office.

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Case File 15-037

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OIG	OIG	(b)(7)(C)	OIG	OIG (b)(7)(C)	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
03/21/16	03/24/16	03/30/16	03/30/16	03/30/16	4.16 03/16	4 03/4/16

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OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

June 29, 2016

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Senior Special Agent, (b)(7)(C)

SUBJECT:

CONCERNS PERTAINING TO U.S. NUCLEAR
REGULATORY COMMISSION COMPUTER SECURITY
OFFICE AND THE FEDERAL INFORMATION SECURITY
MODERNIZATION ACT OF 2014 AUDIT (OIG CASE NO.
15-040)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was based on an allegation from a confidential informant (CI) that an OIG audit contractor employee (b)(7)(C) whom the CI believes has been performing the Federal Information Security Modernization Act (FISMA) of 2014 audit for years, simply "checks the box" when conducting her audit.

Potential violations relevant to this allegation are 18 USC 287 - False - Fictitious or Fraudulent Claims, and 41 USC 604 - Fraudulent Claims.

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Findings

OIG found that the FISMA audit conducted by Carson, Inc., was conducted as directed by the Statement of Work. OIG also learned that the scope of work is determined by the U.S. Office of Management and Budget (OMB) and not by OIG.

Basis for Findings

On December 17, 2002, the President signed into law the E-Government Act, which includes Title III, FISMA. FISMA requires (1) annual agency program reviews, (2) annual Inspector General (IG) evaluations, (3) agency reporting to OMB the results of IG evaluations for unclassified systems, and (4) an annual OMB report to Congress summarizing the material received from agencies.

OIG reviewed the Statement of Work for NRC Contract 13-233-SOL, which requires the contractor to

“conduct an independent evaluation for OIG of NRC's computer security program, policies, and practices. This audit shall fulfill FISMA requirements and the contractor shall utilize current FISMA guidance, including that found at <http://www.whitehouse.gov/omb/>.... The contractor shall respond to all OMB instructions as reflected at <http://www.whitehouse.gov/omb/>. This includes answering the template provided by OMB for all OIG's to respond to.... After issuance of the final report...., the contractor project manager or designated supervisor will review evaluation work papers prepared by contractor employees.... Based on this review, the project manager or designee will issue a letter to OIG conveying an assessment of the adequacy of the work papers.”

The CI told OIG that while in conversation with (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

Office of Chief Information Officer, about the challenges with the information technology infrastructure, they discussed the FISMA audit. The CI asked

(b)(7)(C)

“If the system is not ready for prime time and the Inspector General is auditing the system, won't they [OIG] find these challenges?” The CI said (b)(7)(C)

(b)(7)(C)

response was, “The contractor that they have hired wouldn't be able to find them, anyway. All they are doing is checking boxes and checking paperwork....

Because all she is doing is checking the boxes to make sure certain paperwork is done. She is not really, to me, looking at holistically what should be done....”

(b)(7)(C) told OIG that she is responsible for the cyber security policy for the agency, compliance with FISMA and agency standards and regulations, training, and guides that they produce. She did not remember exactly which systems were selected by the auditor to review for the FISMA audit, but thought ADAMS was one. She said that the audit team asked for information about all of NRC systems with respect to NRC's compliance with FISMA, and her office provides it. She said her interaction with the auditor was primarily through email. She said the auditor would send a request for information and her team would set up a SharePoint site where they deposited the information so that the auditor could have access.

It was (b)(7)(C) understanding that OMB instructs auditors on how to conduct the FISMA audit, instructing them what exactly to ask for and what to look for. She said she had no idea what their target sets were. However, the auditor selects systems to review based on their previous review of that system and any new information, which would cause them to review the system again. She said the questions asked by the auditor are not any different than they have been in the previous years, and that this is not a concern to her because the audit is directed by OMB and Congress. In her opinion, the audit has very little value, and does not identify the "underlying issues." [Investigative Note: OIG requested (b)(7)(C) provide OIG information on her specific concerns that are not captured by the FISMA audit, and she never provided the information to the OIG.]

(b)(7)(C) serves as the (b)(7)(C) for the contract. She told OIG that the FISMA evaluation is an annual OMB requirement, and OIG Audits contracts with Carson, Inc., to conduct this annual evaluation. (b)(7)(C) said OIG Audits has used Carson since 2002 and that the contract is a 1-year base contract with four 1-year options. (b)(7)(C) relayed that 90 percent of the audit is conducted by (b)(7)(C)

(b)(7)(C) who holds the following certifications: Certified Authorization Professional; Qualified Security Assessor; Approved Scanning Vendor; a SANS GIAC ISQ-2700 certification; and a Certified Information Systems Security Professional certification.

(b)(7)(C) said that the requirements for the evaluation are set by OMB, which provides questions to ask during the audit and documentation to be gathered from NRC's Computer Security Office. She said this is the extent of the scope of work to be delivered by Carson and that Carson follows the statement of work and has no reason to look into items not covered in the statement of work.

(b)(7)(C) advised that the evaluation commences in June and a report is due by mid-November. (b)(7)(C) stated that (b)(7)(C) Carson, does the verification and quality assurance for the contract report. She said the verification is not

done until after the report is submitted to the Department of Homeland Security and becomes public.

(b)(7)(C) indicated that the 2014 FISMA audit report was never verified by (b)(7)(C) because she (b)(7)(C) forgot to ensure it was done. However, in October 2015, she received the 2014 FISMA audit verification from (b)(7)(C) also stated she goes to Carson's office to verify the work papers produced under the contract. She stated that she has reviewed and verified the Monthly Status Reports and costs that have been submitted by Carson pertaining to the FISMA audit and is in agreement with the costs.

(b)(7)(C) stated that she reviews the workpapers that the contractor prepares to see if it appears the work was captured accurately and was necessary to support the findings in the report. She stated the contractor uses the same elements of a finding as OIG Audits uses so it is pretty easy to see if their workpapers makes sense. She said she does this to make sure OIG Audits is paying for what is needed and that the bills or hours are not inflated. She further stated that she is courtesy copied on every email, so she knows what is going on with the contract.

With regard to the hours billed, (b)(7)(C) stated she looks at the monthly statements to see how many hours were billed for each task. In the statement of work, the contractor estimated the hours needed for each task and (b)(7)(C) looks to see if the hours are reasonable each month for what was identified as being worked on for the monthly status report.

(b)(7)(C) stated that she has had the same contractor for 12 years on the same subject; therefore, she is extremely familiar with what work papers are created and the number of hours billed for each task.

[Investigative Note: Since the initiation of this investigation (b)(7)(C) relinquished her duties of (b)(7)(C) for this contract and has assigned such duties to another member of her team.]

Because, OIG did not identify any evidence to suggest any violation of 18 USC 287 - False - Fictitious or Fraudulent Claims or/and 41 USC 604 - Fraudulent Claims by the audit contractor, Carson, Inc., it is recommended that this case be closed to files of this office.

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Distribution

Case File 15-040

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OIG (b)(7)(C)	OIG	(b)(7)(C)		OIG	OIG (b)(7)(C) J. McMillan	OIG D. Lee	OIG H. Bell
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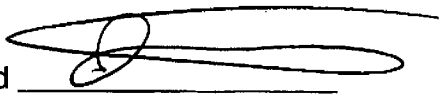
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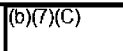
**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

September 30, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

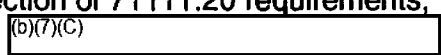
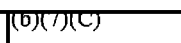
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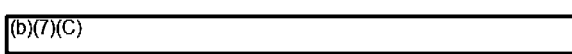

(b)(7)(C)

Team Leader, 

SUBJECT:

FAILURE TO PERFORM U.S. NUCLEAR REGULATORY
COMMISSION INSPECTION REQUIREMENTS BY
REGION II (OIG CASE NO. 15-41)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted this investigation based on an anonymous allegation that NRC Region II inspectors failed to perform an adequate inspection of 71111.20 requirements, "Refueling and Other Outage Activities," at the  (b)(7)(C)). According to the allegor, a Region II  allowed NRC inspectors to close out a portion of an inspection pertaining to the containment area using a camera that had a limited view of the area. The allegor questioned the quality of inspection oversight and maintained that NRC Region II allowed this to happen.

OIG learned that the  conducted the relevant portion of the inspection with the use of a camera in the containment area. Additionally, during the investigation, OIG learned that the  intentionally did not declare her pregnancy to the licensee so that the licensee could not prevent her from entering the containment area.

Potential violation relevant to this investigation is 5 CFR 2635, Standards of Conduct.

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Findings

OIG found the (b)(7)(C) partial walk-down of (b)(7)(C) containment area, combined with her video camera review of high radiation areas in containment she could not physically access due to her pregnancy, did not violate NRC inspection requirements. According to an Office of Nuclear Reactor Regulation (NRR) reactor operations engineer who is the lead for NRC Inspection Procedure (IP) 71111.20, the intent of IP 71111.20 (thorough inspection and walk-down of containment) was met when (b)(7)(C) (b)(7)(C) conducted a partial walk-down of containment while relying on a video of the other levels that she should not physically view due to her pregnancy. (b)(7)(C) (b)(7)(C) said he agreed with the use of a video camera under the circumstances (b)(7)(C) used it for at (b)(7)(C).

According to the (b)(7)(C) the licensee was not happy with her entering containment while pregnant; however, because she had not declared the pregnancy, they could not prevent her from entering containment. OIG confirmed that the (b)(7)(C) was not required to declare her pregnancy to the licensee, according to the relevant licensee procedure for declared pregnant workers.

While OIG did not find any evidence of misconduct by RII staff, OIG discussed with then-(b)(7)(C) the possible licensee concern due to an NRC employee entering the containment area while pregnant.

OIG also briefed the investigation to the Office of the General Counsel (OGC) who researched, at OIG's request, applicable regulations and the adequacy of the inspection. OGC determined that (b)(7)(C) did not violate NRC regulations by not declaring her pregnancy. OGC also determined that (b)(7)(C) inspection appeared to meet the intent of IP 71111.20.

Basis for Findings

OIG learned from Region II's SharePoint Site that (b)(7)(C) Unit 2 was scheduled to be in a planned outage, number (b)(7)(C), from approximately February 14, 2015 - March 21, 2015. The outage ran longer as described in the NRC Integrated Inspection Report, which stated that Unit 2 was still in refueling outage (b)(7)(C) as of April 1, 2015. Also contained on this SharePoint site was information stating that a temporary containment opening was being created at (b)(7)(C) for the following reasons: Containment Atmosphere Control Outage, Reactor Building Outage, and the Conventional Service Water Inspection.

From review of Inspection Procedure 71111.20, OIG learned that this inspection is performed during outages. All inspection sections are to be conducted for refueling

outages, if possible. There are two sections within the procedure that describe tasks related to containment:

Section 02.07 Monitoring of Heat-up and Startup Activities. If containment was opened, the inspector shall conduct a thorough inspection and walk-down of containment prior to reactor startup. Particular attention should be given to areas where work was completed to verify no evidence of leakage, and to verify that debris has not been left which could affect performance of the containment sumps.

Section 03.07 Monitoring of Restart Activities. This activity should focus on the licensee having the required equipment available for mode changes to ensure that risk is kept to a minimum. The activity can be conducted by direct observation of system/equipment operation, documentation reviews, or a combination of both. The sampling should be adequate to provide reasonable verification that the licensee is following the administrative program laid out to ensure that risk is maintained at a minimum level. Prior to containment closure, a thorough walk-down of containment shall verify there is no evidence of leakage, tags are cleared, there is no obvious damage to passive systems, and there is no containment sump damage or debris....

On July 31, 2015, NRC published the (b)(7)(C) Integrated Inspection Report. The report states that during the refueling outage, the inspectors monitored licensee controls over the activity of "Walk-down of the drywell (primary containment) to verify that debris had not been left which could block emergency core cooling system suction strainers."

This integrated inspection report identifies four NRC inspectors who participated in the various inspections during the timeframe of April 1, 2015, through June 30, 2015, at

(b)(7)(C)

(b)(7)(C)

and two acting (b)(7)(C)

OIG learned from (b)(7)(C) that (b)(7)(C) was the only resident onsite on April 4, 2015, when Brunswick was restarted.

(b)(7)(C) told OIG that (b)(7)(C) was supposed to do the walk-down of Unit 2's containment but due to scheduling conflicts (b)(7)(C) had, she (b)(7)(C) did a partial walk-down of Unit 2 because of her pregnancy. She said she discussed this issue with her branch chief, (b)(7)(C), prior to her entering containment and that (b)(7)(C) had agreed to let her conduct a partial walk-down of Unit 2 as long as they met the intent of the inspection procedure.

She said that one of the other (b)(7)(C) from the same (b)(7)(C) (b)(7)(C), volunteered to conduct the walk-down, but that (b)(7)(C) decided it was not necessary since there was no guarantee that the containment would be ready for inspection when (b)(7)(C) arrived on site. She said the schedule to enter containment is very fluid since they have to wait for all the workers to finish their work and take down the scaffolding and clean containment of all debris.

(b)(7)(C) stated that she was 6 months pregnant (at the time) and it would not have been safe to climb up and down the ladders to reach the other levels in containment. Also, the Unit 2 containment was considered a very high radiation area and contaminated area, and she needed to limit the radiation dose to the fetus. Finally, the containment area is very hot during that stage in the outage, which limits the amount of time NRC and plant staff are allowed to stay in there. She stated that (b)(7)(C) (b)(7)(C), offered to have licensee staff enter containment using a Go Pro camera to capture the levels that she was unable to reach due to her pregnancy. She stated that she was given a copy of the video of the containment that was captured by the Go Pro camera so that she could verify that the containment was ready for startup. She stated she reviewed the videos before the unit was restarted and identified no issues.

She stated that she inspected the containment from the 20-foot level, which contained a minimal amount of radiation and that she was accompanied by the (b)(7)(C) shift manager, (b)(7)(C). She stated that she was in the containment approximately 30 minutes and received about 5mrem of radiation. (b)(7)(C) also relayed that the licensee was not happy with the fact she was entering containment while pregnant. However, (b)(7)(C) said because she did not declare her pregnancy they could not prevent her from entering.

(b)(7)(C) told OIG that he clearly recalled a conversation with (b)(7)(C) prior to her entering containment (drywell) about having the shift supervisor do the walk-down for her with glasses that contain a recording camera, so that she would not have to enter the drywell since she was pregnant. He stated that she would be able to view the video after the (b)(7)(C) exited the drywell. (b)(7)(C) stated that (b)(7)(C) insisted on doing the walk-down herself because there were spots in the drywell that were too dark for the video to capture.

(b)(7)(C) told OIG he was present when (b)(7)(C) conducted her walk-down of Unit 2 during the outage. He stated that he accompanied (b)(7)(C) to the 17-foot level of the containment, where she pointed things out to him that needed to be corrected before restart. He said they were accompanied by a (b)(7)(C) health physicist because there was a concern about (b)(7)(C) pregnancy. He was not sure, but thought the walk-down lasted less than an hour.

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(b)(7)(C) Division of Reactor Projects, RII, told OIG he was satisfied with the walk-down of (b)(7)(C) Unit 2 containment conducted by (b)(7)(C). He was aware that a portion of the walk-down was completed using video, and he believed it met the intent of IP 71111.20. He said there was nothing in the IP that prohibited the use of video when conducting a thorough walk-down, and that the IP was silent on the matter of using video. According to (b)(7)(C) while (b)(7)(C) had to perform a walk-down in areas that were not high radiation levels, she could use a camera in the high radiation areas because of her pregnancy.

(b)(7)(C) said that (b)(7)(C) told him that she received a complaint from the licensee because she went into the (drywell) containment area and did not declare her pregnancy. According to (b)(7)(C) the licensee may have made the allegation about the containment walk-down as retribution because (b)(7)(C) tended to ask questions and raise a lot of issues during her inspections.

(b)(7)(C) (b)(7)(C) NRR, told OIG that he was the lead for IP 71111.20, and based on the facts as relayed to him, the intent of IP 71111.20 was met when (b)(7)(C) conducted a partial walk-down of (b)(7)(C) Unit 2 containment while relying on video of the other levels that she could not physically view due to her pregnancy. (b)(7)(C) had not heard of anyone using video to conduct a partial walk-down but said that under these circumstances it would be acceptable to use this proxy to conduct part of the walk-down as long as the quality of the video was acceptable for the purpose. He would have preferred if (b)(7)(C) had viewed the other containment levels via live feed versus viewing video recordings after the fact; however, he said as long as (b)(7)(C) viewed (via video) those areas that she would have viewed if she had been physically present, then he is satisfied that the intent of IP 71111.20 was met. He said that it was not unusual to use cameras in high radiation or hazardous areas to conduct inspections.

(b)(7)(C) stated that 10 CFR Part 20 does not speak to whether or not a pregnant employee can enter containment, but rather the (regulation addresses the) amount of dosage a fetus can be exposed to. Furthermore, he stated that he does not believe that a supervisor can order an undeclared pregnant subordinate not to enter containment without raising other legal issues. He stated that based on the facts presented to him, he is satisfied that the intent of IP 71111.20 was met in this case.

(b)(7)(C) NRR told OIG that he is not a subject matter expert on 71111.20 but agrees with (b)(7)(C) that the intent of IP 71111.20 was satisfied when the (b)(7)(C) reviewed video to complete her walk down of the drywell due to her pregnancy. (b)(7)(C) said that as long as the video showed those sections of the drywell that the (b)(7)(C) would have sampled during her inspection if she had

physically been able to so, then as far as he was concerned the intent of the IP was satisfied.

In addition, regarding (b)(7)(C) view that a licensee could not prevent her from entering containment while pregnant because she did not declare her pregnancy, OIG reviewed Duke Energy's (b)(7)(C) licensee holder) procedures for pregnant workers. According to Duke Energy Procedure TE-RP-ALL-4001, Declared Pregnant Worker, it defines "Declared Pregnant Worker," as defined in 10 CFR 20.10003 as "...a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception." (b)(7)(C) (b)(7)(C) advised OIG that there is "no limitation within the procedure as to who may or may not declare and the procedure does not mention NRC personnel."

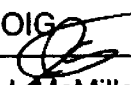



OIG briefed OGC on the results of this investigation and asked for its review to determine if (b)(7)(C) violated any NRC regulations by not declaring her pregnancy while visibly pregnant, the adequacy of the inspection completed by (b)(7)(C) NRC's management's duty to keep NRC employees safe, and possible future liability if (b)(7)(C) child suffered some harm from radiation exposure in utero. OGC determined that based on the facts presented, (b)(7)(C) did not violate NRC regulations by not declaring her pregnancy or conducting the inspection, which appears to have met the intent of a "thorough walkdown" in IP 71111.20. OGC also determined that (b)(7)(C) NRC manager acted consistently with NRC regulations and guidance. Finally, OGC determined that NRC's risk of liability for potential fetal injury is minimized by the NRC manager and (b)(7)(C) actions in this case and existing regulations and procedures. Attached to this closing memorandum is OGC's memorandum of its analysis.

OIG advised the then (b)(7)(C) of the outcome of this investigation. Because there is no evidence of misconduct by (b)(7)(C) for failing to conduct an adequate inspection, it is recommended that this case be closed to the files of this office.

Distribution:

Case File 15-041

Magnum

OIG (b)(7)(C)	(b)(7)(C)	OIG (b)(7)(C)	OIG 	OIG 	OIG
(b)(7)(C)		(b)(7)(C)	J. McMillan	D. Lee	H. Bell 
09/30/16	1 / 16	9/30/16 	9/30/16	9/30/16	9/30/16

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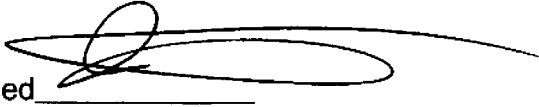


OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

August 3, 2016

MEMORANDUM TO:


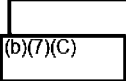
Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)


Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

For (b)(7)(C)
Special Agent, (b)(7)(C)


SUBJECT:

POTENTIAL MISUSE OF GOVERNMENT POSITION BY
NUCLEAR SECURITY AND INCIDENT RESPONSE STAFF
(OIG CASE NO. 16-004)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation in response to an allegation that on October 22, 2015, Robert BUNCH, Intelligence Analyst, Intelligence Liaison and Threat Assessment Branch (ILTAB), Division of Security Operations (DSO), Office of Nuclear Security and Incident Response (NSIR), left his business card for Two Arrows Consulting, Inc., in a Commissioner's office. According to the allegor, Two Arrows Consulting, Inc., provided intelligence services in Human Intelligence, Counterintelligence (CI), and Imagery Intelligence. In particular, Two Arrows Consulting, Inc., provided Critical Infrastructure Analysis, Subject Matter Expertise in Chemical/Nuclear Sectors, and Support to Domestic Nuclear Detection/Office on Trafficking of Nuclear Material and this presented potential misuse of Government position and potential conflict of interest.

Potential violations relevant to this allegation include the following: NRC Management Directive (MD) 7.8, "Outside Employment"; NRC MD 7.9, "Ethics Approvals and Waivers"; NRC MD 2.7, "Personal Use of Information Technology"; 5 CFR 2635.702,

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“Use of Public Office for Private Gain”; 5 CFR 2635.703, “Use of Nonpublic Information”; and 5 CFR 2635.502, “Personal and Business Relationships.

Findings

OIG found evidence of BUNCH conducting business related to Two Arrows Consulting on his Government issued computer. OIG found evidence that Two Arrows Consulting listed NRC as a satisfied client on a document. OIG found evidence that BUNCH was in possession of non-public information, but found no evidence of inappropriate use of that information. OIG found no evidence that BUNCH provided Two Arrows with or that Two Arrows Consulting used any classified information gained from BUNCH's position with the NRC. Further attempts to investigate wrongdoing by BUNCH were halted because BUNCH committed suicide in March 2016.

Basis for Findings

Interview of (b)(7)(C)

(b)(7)(C) NSIR, told OIG that she was contacted by (b)(7)(C) Commissioner OSTENDORFF, regarding a Two Arrows Consulting, Inc., business card that BUNCH left in the Commissioner's office. (b)(7)(C) said that she went to the business Web site and Twitter page to understand how the business potentially was involved with the Intelligence Community (IC). (b)(7)(C) asked BUNCH about leaving the business card in the Commissioner's office and he explained that it was unintentional and must have fallen out of his suit pocket. She asked him if he did any work with the IC and he said he just took care of the business aspect of the company.

(b)(7)(C) told OIG that after she spoke with BUNCH, she rechecked the Two Arrows Web site and it had been changed. She said that what she had presumed to be BUNCH's initials had been removed and the client list had changed. (b)(7)(C) said references to Department of Homeland Security (DHS), including the Domestic Nuclear Detection Office and Office of Intelligence and Analysis, and “subject matter expertise in chemical/nuclear sectors” had also been removed. (b)(7)(C) said that at NRC, BUNCH worked with the chemical/nuclear sector of critical infrastructure analysis and was reviewing a document for the Domestic Nuclear Detection Office. (b)(7)(C) told OIG that almost all clients listed on the Two Arrows Web site before it changed were agencies her office worked with regularly. She visited BUNCH's LinkedIn page and found he was registered as the Vice President and identified as a “businessman” with Two Arrows Consulting.

[Investigative Note: After interviewing (b)(7)(C) OIG attempted to visit BUNCH's LinkedIn page, to confirm what (b)(7)(C) told OIG, but could not gain access to the page.]

Review of Emails Forwarded From (b)(7)(C)

OIG reviewed four emails forwarded from (b)(7)(C) containing information regarding BUNCH's private business activities and NRC's Office of the General Counsel (OGC) guidance on the issue. In one email (b)(7)(C) asked BUNCH, during the morning of October 28, 2015, if he contacted OGC (b)(7)(C) about the business. BUNCH said that Two Arrows Consulting did not have clients that met the criteria, per MD 7.8, of entities regulated by the Commission and therefore he did not require approval from OGC. She also asked him if the business related to anything he did at NRC and if he did any work with the IC. (b)(7)(C) said it was a business consulting firm and that he just handled the administrative side of the business and did not participate in any work with the IC.

In another email, (b)(7)(C) sent OIG a PowerPoint that consisted of screenshots of the Two Arrows Consulting Web site that she copied prior to it being changed on October 28, 2015, after her conversation with BUNCH. (b)(7)(C) provided another email regarding contact between (b)(7)(C) and (b)(7)(C), OGC. (b)(7)(C) informed her that some of the ethics restrictions governing employee outside activity or interactions with persons outside the agency did not apply if the "outsider" was another Federal Government entity. He said what is never okay is when a Government employee uses their official position in a way that results in a private benefit for themselves, so OGC always advises employees who do outside work for companies with Federal clients to consult with OGC.

Review of Business Card Left in Commissioner's Office

OIG reviewed the business card left in Commissioner Ostendorff's office. One side contained the words (b)(7)(C), describing it as agile, relevant, and engaged. The other side of the card contained the name Rob BUNCH and described him as "businessman and EVP." It also contained phone number 703.999.9787; email address rob.bunch@two-arrows.com; Web site address www.two-arrows.com; and names of three States, New York, Virginia, and Florida.

Review of www.two-arrows.com

On October 27, 2015, OIG reviewed Web address www.two-arrows.com, which is the Web site for Two Arrows Consulting, Inc. The Web site had several tabs to select: Home, Story, Solutions, Clients, Contact, and Careers. At the bottom of the Story tab were the initials (b)(7)(C) R.B., and (b)(7)(C). After the initials R.B. were the descriptive terms businessman, vision and design, marketing, corporate governance, and simplifier. The solutions page contained a list of services provided to include critical infrastructure analysis, subject matter expertise in chemical/nuclear sectors, and support to Domestic Nuclear Detection Office on trafficking of nuclear material. The Clients page listed Defense Intelligence Agency, Federal Bureau of Investigations, and DHS to include the

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Office of Intelligence and Analysis, Office of Infrastructure Protection, and Domestic Nuclear Detection Office.

On October 29, 2015, after concerns from (b)(7)(C) were raised about changes to www.two-arrows.com, OIG revisited the Web address to confirm or refute changes. During the review, it was noted that the initials R.B. had been removed and the client list had changed. The DHS, the Domestic Nuclear Detection Office, and Office of Intelligence and Analysis, and the phrase, “subject matter expertise in chemical/nuclear sectors,” had all been removed.

(b)(7)(E) **Records Check**

OIG conducted an (b)(7)(E) records check on BUNCH. The check revealed BUNCH was the Vice President. (b)(7)(C) was the (b)(7)(C) and (b)(7)(C) was the (b)(7)(C) of Two Arrows Consulting, Inc., a management consulting company that started in 2012.

Computer Forensic Analysis of BUNCH's NRC Computer

OIG's (b)(7)(E) conducted forensic imaging and analysis of BUNCH's NRC computer. The digital analysis of the (b)(7)(C) of user profile RXB6 (BUNCH) identified evidence the user was using his NRC issued Government computer to conduct business related to Two Arrows Consulting. OIG (b)(7)(E) found approximately 43 documents and more than 200 emails as a result of search term Two Arrows Consulting. A search of the Uniform Resource Locator Web site addresses revealed BUNCH visited www.two-arrows.com on multiple occasions.

One of the 43 documents found contained the header, “TWO ARROWS CONSULTING INC. 2013.” The document was saved as “TAC Outreach 2013 SOCOM SBO v2.docx.” The document gave a brief description of the company, the current services offered, and past satisfied clients. Included among services offered were critical infrastructure analysis and non-proliferation analysis. Under critical infrastructure analysis was listed subject matter expertise in the chemical and nuclear sector. Under non-proliferation analysis was listed support to NRC on tracking nuclear technology and support to Domestic Nuclear Detection Office on trafficking of nuclear material. A list of past satisfied clients included DHS and NRC. Under DHS was Office of Intelligence and Analysis, Office of Infrastructure Protection, and Domestic Nuclear Detection Office. Under NRC was Intelligence Liaison Threat Branch.

Some of the emails found consisted of getting Two Arrows Consulting President's approval of a description of Two Arrows Consulting, sub-contracting opportunities for (b)(7)(C) listing Two Arrows Consulting as a start-up business for tax purposes, dates and contents of Two Arrows Consulting board meetings, and Two Arrows Consulting's marketing strategies and pricing. OIG (b)(7)(E) did not find any

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evidence of Official Use Only (OUO) or classified information in the emails related to (b)(7)(C) from (b)(7)(C) NRC computer.

Computer Forensic Analysis of (b)(7)(C) Personal Digital Media

OIG was notified by (b)(7)(C) Two Arrows Consulting, Inc., that BUNCH committed suicide on March 7, 2016. OIG contacted Bunch's (b)(7)(C) (b)(7)(C) to coordinate return of BUNCH's personal effects from his NRC office. While returning personal effects, OIG obtained consent from (b)(7)(C) to search (b)(7)(C) personal digital media. Based on (b)(7)(C) voluntary consent, OIG (b)(7)(C) (E) conducted forensic imaging and analysis of a Toshiba external hard drive, six thumb drives, and an Apple MacBook Pro. The results of the analysis revealed the following:

- The Micro Center 2 GB thumb drive contained a document named "Quest" and marked Unclassified, "For Official Use Only" (FOUO). "Quest" was the NRC foreign travel debrief questionnaire form.
- The SanDisk Cruzer Mini 256 thumb drive contained a document named 11 April Nuclear Brief.ppt marked Unclassified, FOUO. The document was a DHS, Office of Intelligence and Analysis, brief on nuclear sector threats dated April 14, 2011.
- The other digital media contained many personal pictures and documents, but OIG did not identify any information specific to NRC or Two Arrows Consulting.

Although OIG found Unclassified, FOUO documents on BUNCH's personal digital media, OIG did not identify any classified documents on the digital media. (b)(7)(C) told OIG that although foreign travel debrief questionnaire was FOUO, it was unclassified and not considered a spillage of information. Her recommendation was to wipe it from the thumb drive prior to returning the digital media to (b)(7)(C)

Review of Subpoena Documents

Pursuant to an OIG subpoena, Two Arrows Consulting provided OIG direct access to BUNCH's email account, rob.bunch@two-arrows.com. OIG review of the email account reflected that someone had routinely checked the account from November 20, 2012, until September 27, 2015. The email account contents pertained mostly to perspective employees, future contracts, marketing, and potential conferences. OIG did not identify any mention of NRC in the emails reviewed and did not identify any OUO or classified information in any of the emails reviewed.

Based on subpoenaed documents provided by Two Arrows Consulting, the company was awarded a contract with Octo Consulting Group, Inc., to support Octo in delivery of Acquisition Engineering Services. According to the documents, this was the only contract awarded to Two Arrows, and (b)(7)(C) was the sole performer on the contract. According to the subpoenaed documents, BUNCH managed the company's Web site,

www.two-arrows.com, until July 2015, when he no longer participated in Two Arrows Consulting due to personal issues. BUNCH transferred management of the Web site to (b)(7)(C) in December 2015. Two Arrows Consulting had no records of any applications made by BUNCH for access to law enforcement data bases.

Interview of (b)(7)(C)

(b)(7)(C), OGC, (b)(7)(C) told OIG that there appeared to be no violation of MD 7.8 because Two Arrows Consulting clients did not meet the criteria of being one of the eight entities regulated by the Commission or having a foreign government nexus. He said there was a violation of MD 2.7 and 5 CFR 2635.702 for use of NRC information technology equipment to conduct a personal business and a potential violation of 5 CFR 2635.702 for listing NRC as a satisfied client on the document discovered.

(b)(7)(C) also said there was a potential violation of MD 7.9 and 5 CFR 2635.502 for causing a reasonable person to question the impartiality between BUNCH and Two Arrows Consulting clients due to his NRC duties dealing with some of the clients. In addition, there was a potential violation of 5 CFR 2635.703 due to BUNCH having NRC's foreign travel debrief questionnaire, which was OOU, on his personal thumb drive.

Contact with Fauquier County Sheriff's Department

OIG contacted Detective (b)(7)(C) investigating officer of BUNCH's death, to confirm that BUNCH passed away on March 7, 2016, and to determine the cause of death. (b)(7)(C) told OIG that BUNCH was found deceased on March 7, 2016, and that on April 5, 2016 the Medical Examiner ruled BUNCH's death a suicide by carbon monoxide poisoning. [Investigative Note: No additional interviews were conducted following BUNCH's death.]

This investigation identified evidence that BUNCH conducted business related to Two Arrows Consulting on his Government issued computer and potentially misused his Government position due to his relationship with Two Arrows Consulting. Although BUNCH was in possession of non-public FOUO documents on his personal thumb drives, OIG did not identify any evidence that BUNCH improperly used that information. Because BUNCH committed suicide, it is recommended that this case be closed to the files of this office.

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Case File 16-004

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OIG	OIG	(b)(7)(C)	OIG	OIG	OIG	OIG
(b)(7)(C)	(b)(7)(C)		(b)(7)(C)	J. McMillan	D. Lee	H. Bell
/ /16	7/26/16	/ /16	7/26/16	8/1/16	/ /16	8/13/16

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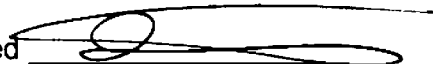


UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001


OFFICE OF THE
INSPECTOR GENERAL

February 24, 2016

MEMORANDUM TO:

Concur: Case Closed 
Joseph A. McMillan
Assistant Inspector General
For Investigations

THRU:

(b)(7)(C) 
(b)(7)(C) Team Leader, (b)(7)(C)
(b)(7)(C)
(b)(7)(C) Special Agent, (b)(7)(C)

FROM:

SUBJECT: ALLEGED INTENTIONAL WITHHOLDING OF
INFORMATION FROM FORMER NRC CHAIRMAN BY NRC
STAFF (OIG CASE NO. 16-11)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), received an allegation from (b)(7)(C) Office of the Chairman, NRC, concerning comments made by (b)(7)(C) to Chairman Stephen BURNS during an October 29, 2015, briefing on Westinghouse's Job Shadow Program with China. According to (b)(7)(C) told Chairman BURNS that the staff had knowingly provided inaccurate information to former Chairman Allison MACFARLANE in a Job Shadow Program chronology document in July 2014.

Findings

OIG found that (b)(7)(C) incorrectly informed Chairman BURNS in October 2015 that NRC staff had knowingly provided MACFARLANE with inaccurate information

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about the Westinghouse Job Shadow Program in July 2014. A review of the matter by the Office of Nuclear Security and Incident Response (NSIR) determined that NRC staff inadvertently provided incomplete information to MACFARLANE about the highly sensitive program in July 2014 based on limited information that had been available to them at the time. After the October 2015 briefing with Chairman BURNS, (b)(7)(C) was informed that (b)(7)(C) had misspoken and that the individuals who compiled the information for MACFARLANE provided accurate information to her as they knew it.

Basis for Findings

(b)(7)(C) told OIG he first received a briefing from NSIR staff during the week of October 19, 2015, concerning the background and history of the Westinghouse Job Shadow program with China for the AP1000 exchange. He requested Chairman BURNS receive the brief and it was scheduled for October 29, 2015. At the Chairman's brief, (b)(7)(C) presented information that had not been presented previously concerning the timeline of events, and she conveyed that NSIR staff may have misrepresented information provided to former Chairman MACFARLANE. (b)(7)(C) discussed (b)(7)(C) comment with (b)(7)(C) after the meeting and indicated to (b)(7)(C) he would follow up. (b)(7)(C) subsequently learned from his staff that the individuals compiling the information at the time provided accurate information as they knew it, and (b)(7)(C) provided clarifying information to (b)(7)(C) verbally on November 9, 2015.

(b)(7)(C) NSIR, and former (b)(7)(C) MACFARLANE, told OIG that MACFARLANE knew the sensitivities of the FBI's activities as early as May 2014. He was aware that MACFARLANE had been briefed by (b)(7)(C) Office of Investigations (OI), concerning an OI investigation pertaining to the Job Shadow program and that MACFARLANE had received a copy of the investigation. [Investigative Note: (b)(7)(C) corroborated this to OIG.] (b)(7)(C) surmised that the chronology document (which (b)(7)(C) referred to during the briefing with Chairman BURNS) was developed by individuals who did not have all the information.

OIG reviewed an email dated November 4, 2015, from (b)(7)(C) to (b)(7)(C) (b)(7)(C) reflecting the outcome of the staff's review of the accuracy issue. The email, subsequently forwarded to (b)(7)(C) reflected that staff had spoken with the individuals involved with providing input to the document in question and determined these individuals were not aware of all available information and inadvertently provided incorrect information, "which led to the development of the one-sentence statement in the document in question." (b)(7)(C) wrote, "We have no reason to believe that anyone deliberately misled the former Chairman," and noted that the nature of intelligence work

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is that information is tightly controlled and compartmented; the information in question was provided under a short deadline, “meaning that it was not well-researched or well vetted”; and the staff would have arrived at and communicated a more complete answer in a less time-constrained environment.

(b)(7)(C) told OIG that she had made a misstatement to the Chairman on October 29, 2015, about the accuracy of information provided to the former Chairman in approximately July 2014. Shortly after the meeting she coordinated with (b)(7)(C) and (b)(7)(C) NSIR (b)(7)(C) to correct and resolve the matter. She believed (b)(7)(C) had discussed this matter with (b)(7)(C).

OIG provided (b)(7)(C) these findings on November 20, 2015, and asked (b)(7)(C) if he recalled the additional conversation with (b)(7)(C). (b)(7)(C) replied he was not sure, but recalled talking to (b)(7)(C) from the White House on/about November 6, 2015. (b)(7)(C) did not recall discussing these additional details with MCCREE, but stated it was possible (b)(7)(C) closed this information followup with him; he did not remember.

Based on the above chronology and facts indicating information was not intentionally withheld from then Chairman MACFARLANE, it is recommended that this investigation be closed to the files of this office.

Distribution

Case File 16-11

Historical File

Magnum

OIG (b)(7)(C)	OIG	(b)(7)(C)	OIG (b)(7)(C)	OIG J. McMillan	OIG D. Lee	OIG H. Bell
02/16/16	02/18/16	02/19/16	02/22/16	02/24/16	3/1/16 02/27/16	3/1/16 02/27/16

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OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

November 8, 2016

MEMORANDUM TO:

Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

(b)(7)(C)

FROM:

Special Agent, (b)(7)(C)

SUBJECT:

ALLEGED PRE-SELECTION BY U.S. NUCLEAR
REGULATORY COMMISSION REGION II MANAGEMENT
(OIG CASE NO. C16-15)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an anonymous allegation that in January 2016,

(b)(7)(C)

Region II, NRC,

directed regional managers to terminate a 6-month (b)(7)(C)

rotation assignment being filled by (b)(7)(C) Also, during a meeting with

(b)(7)(C)

instructed managers to write a position description that ensured (b)(7)(C) got a permanent GG-14 (b)(7)(C) position.

Potential violation relevant to this allegation is provisions in 5 CFR 2635.101, "Basic Obligation of Public Service."

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Findings

OIG did not substantiate that Region II managers improperly terminated a temporary (b)(7)(C) position or that managers later posted a permanent (b)(7)(C) vacancy position and preselected the same individual who previously held the temporary (b)(7)(C) position. OIG found that (b)(7)(C) was initially selected for a (non-competitive) temporary promotion as the (b)(7)(C) assigned at (b)(7)(C) Unit 2. After the completion of this assignment, (b)(7)(C) was selected to fill a competitive temporary promotion assignment not to exceed 1 year for the (b)(7)(C) position at (b)(7)(C) Unit 2. Both the non-competitive and competitive temporary promotions were allowed under guidelines established in Management Directive 10.1, *Recruitments, Appointments and Merit Staffing*.

Chronology

On February 26, 2015, (b)(7)(C) then (b)(7)(C) Division of Reactor Safety (DRS), Region II, NRC, selected (b)(7)(C) to fill a temporary promotion for the (b)(7)(C) position for (b)(7)(C) 2 with an effective date of May 31, 2015.

On May 31, 2015, Standard Form 50 action for (b)(7)(C) indicated a temporary promotion from GG-13 step 10 to GG-14 step 6, not to exceed (NTE) September 5, 2015.

On September 6, 2015, Standard Form 50 action for (b)(7)(C) indicated an extension of promotion (GG-14 step 6), NTE November 28, 2015.

On November 29, 2015, Standard Form 50 action for (b)(7)(C) indicated a change to lower grade from GG-14 step 6 to GG-13 step 10.

From January 15, 2016 – January 22, 2016, job announcement R-II/DRP-2016-001 was posted for an (b)(7)(C) 2) for series and grade of GG-0840-14; NTE 1 year.

On February 7, 2016, Standard Form 50 action for (b)(7)(C) indicated a temporary promotion from GG-13 step 10 to GG-14 step 6. (b)(7)(C) was selected from announcement R-II-DRS-2016-001. The Standard Form 50 also indicated that the duration of the temporary assignment will coincide with power ascension testing for (b)(7)(C) Unit 2 but is NTE 1 year. (Although the announcement indicated the position was under the DRS, the position was assigned to DRP resulting from a reorganization.)

On June 17, 2016, Standard Form 50 action for (b)(7)(C) indicated a change to a lower grade from GG-14 step 6 to GG-13 step 10. This form also indicated that (b)(7)(C) resigned from the agency to seek another job opportunity.

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Basis for Findings

(b)(7)(C)

(b)(7)(C) NRC Headquarters, advised OIG that Region II's actions in filling the temporary (b)(7)(C) position for (b)(7)(C) Unit 2 in 2015 and 2016 was accomplished in accordance with guidance contained in Management Directive 10.1, *Recruitments, Appointments and Merit Staffing*. Specifically, under the Management Directive, 180 day temporary, non-competitive promotions are allowed. She recalled that Region II initially requested to extend (b)(7)(C) initial non-competitive promotion, which was not approved by her office. According to (b)(7)(C) it was not prudent to extend a non-competitive promotion beyond 180 days. (b)(7)(C) stated Region II was advised to competitively advertise the position through a job announcement after the first 180 day period ended because of the continuing need. [Investigative note: the initial non-competitive promotion was extended from November 6 - 28, 2015.]

Based on interviews of Region II staff, OIG learned that (b)(7)(C) was non-competitively promoted to a temporary GG-14 position for the period of May 31, 2015 to November 28, 2015; the selecting official was (b)(7)(C). The need for a temporary GG-14 (b)(7)(C) continued to exist at (b)(7)(C) 2 after the 180 day period was completed in November 2015. Region II management first sought to extend (b)(7)(C) in the (b)(7)(C) position when the 180-day period was nearing completion (Fall 2015). When Region II realized that an extension beyond November 2015 was not feasible, they decided to advertise the position. The GG-14 vacancy for the (b)(7)(C) (b)(7)(C) 2 position was competitively announced in January 2016. Terms of the temporary GG-14 promotion were that the position would not exceed 1 year, or until testing, inspection, and construction was completed on (b)(7)(C) Unit 2, whichever occurred first. The open period for the announcement was from January 15, 2016 – January 22, 2016.

OIG interviewed (b)(7)(C) Region II, NRC, who advised that during a site visit on January 6, 2016, she learned from (b)(7)(C) that he was no longer receiving (b)(7)(C) pay. Prior to this discussion, she knew that his 180-day period had expired and that managers were trying to extend him in the position, but heard no more of it. Upon returning from the site visit, she instructed the (b)(7)(C) and (b)(7)(C) to post the position to get it in the hiring process. At the time of the OIG interview, she was not aware who had been selected.

OIG interviewed (b)(7)(C) DRP, Region II, NRC, and learned that (b)(7)(C) was first selected to the temporary (b)(7)(C) position at (b)(7)(C) 2 by (b)(7)(C). At the time, (b)(7)(C) was a (b)(7)(C) at (b)(7)(C) 2 when the (b)(7)(C) position was vacated by (b)(7)(C). (b)(7)(C) stated (b)(7)(C) reverted back to a GG-13 position when the temporary promotion to (b)(7)(C) (180 day) ended in November 2015 after 180 days. Prior to the second (b)(7)(C) posting in

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January 2016, there was a concerted effort to find a way to extend (b)(7)(C) because he was the logical choice; however, (b)(7)(C) contends he and management essentially decided to start the hiring process over with the new announcement. (b)(7)(C) wrote the announcement. According to (b)(7)(C), he was never “strong-armed” by anyone, including (b)(7)(C) to craft the announcement for (b)(7)(C) or to select (b)(7)(C) for the position. (b)(7)(C) said he was the selecting official and after reviewing the two qualifying packages, he selected (b)(7)(C) as the most qualified, on or about February 2, 2016.

According to (b)(7)(C) (b)(7)(C) DRP, Region II, NRC, the new (b)(7)(C) (b)(7)(C) 2 position is temporary because once the unit comes online and the start-up testing and inspections are completed the (b)(7)(C) position will cease. He recalled that the Region II leadership team made the decision to post the (b)(7)(C) 2 position. He denied that (b)(7)(C) had instructed him or others to write the position description for (b)(7)(C). (b)(7)(C) commented it was ironic he was being asked these questions because (b)(7)(C) was conscious that if the position was announced and (b)(7)(C) was selected it would be perceived as pre-selection. (b)(7)(C) does not believe preselection occurred, namely because everyone wanted to avoid that situation, and the perception of it, and everyone was careful to make sure they were not doing it. At the same time, the unique requirements for (b)(7)(C) Unit 2 would narrow the eligible list to a few individuals that possessed the necessary skill set.

(b)(7)(C) (b)(7)(C) Region II, NRC, told OIG that (b)(7)(C) filled a temporary (b)(7)(C) position, GG-14, from May 31- November 30, 2015. The position was not to exceed 180 days. As of October or November of 2015, the positions at (b)(7)(C) were re-organized under DRP. (b)(7)(C) confirmed that (b)(7)(C) was the selecting official for the current (b)(7)(C) position. Two individuals applied and made the certification list, including (b)(7)(C). At the time of the OIG interview, she heard verbally from (b)(7)(C) that (b)(7)(C) was selected to fill the position. She was not aware of any inappropriate action during this process and stated (b)(7)(C) was fully qualified and met the certification criteria.

(b)(7)(C) (b)(7)(C) Region II, NRC, told OIG that he was not involved in the hiring process for the (b)(7)(C) position at (b)(7)(C) 2. He did not recall any conversation concerning the (b)(7)(C) 2 (b)(7)(C) position with (b)(7)(C) also stated he did not witness (b)(7)(C) discussing the (b)(7)(C) 2 position with branch chiefs.

Because OIG did not substantiate any misconduct by Region II managers pertaining to either the non-competitive temporary promotion or the competitive temporary promotion for the (b)(7)(C) Unit 2 position, it is recommended that this matter be closed to the files of the office.

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Case File C16-015

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OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG	OIG
			J. McMillan	D. Lee	H. Bell
10/13/16	10/13/16	10/18/16	10/18/16	11/27/16	11/15/16

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