

August 13, 2013

Nuclear Regulatory Commission (NRC) Chairman Allison McFarlane
Commissioner William Magwood; Commissioner William Ostendorf; Commissioner Kristine
Svinicki; and Commissioner George Apostolakis

Subject: “Protected Disclosure” about Office of Special Counsel lawbreaking involving NRC

Dear Chairman McFarlane and Commissioners,

I received Regional Administrator McCree’s letter of August 5, 2013. I take it to mean something as “NRC leadership lacks the moral courage to seek a resolution of your contentions that “thrice-compounded” federal agency lawbreaking (TVA, Office of Special Counsel, and Merit Systems Protection Board) negatively impacts nuclear safety at TVA.”

Even though NRC takes no exception to the objective basis of my concerns, the letter also fails to state something as “Mr. Carson, you may well be correct, but NRC’s opinion is that it lacks jurisdiction to objectively consider your concerns.” If NRC were open about its claim of lacking jurisdiction, regardless of the validity of my concerns, it might help spur Congressional interest in obtaining their resolution.¹

“Protected Disclosure” about Office of Special Counsel (OSC) lawbreaking involving NRC

For many years, OSC has regularly “informally” referred a significant number of whistleblower disclosures it receives to the relevant agency IG. This is detailed in OSC’s Annual Reports to Congress, see http://www.osc.gov/RR_AnnualReportsToCongress.htm - OSC is not hiding this practice. OSC has no statutory authority to make such “informal” referrals of whistleblower disclosures to agency IG’s and there is no Office of Legal Counsel opinion, subsequent to the Whistleblower Protection Act of 1989, that permits it.

5 USC section 1213 gives OSC complete autonomy for its “substantial likelihood” determinations in making referrals per section 1213(c). It also give OSC complete discretion about making formal referrals of whistleblower disclosures to agency heads per section 1213(g)(1) and (g)(2). However, no where does the law authorize OSC to make discretionary and informal referrals of whistleblower disclosures to agency IG’s. Because they are informal, there is no duty on the part of the agency IG to do anything –unlike the duties created for the agency head, when OSC formally refers a whistleblower disclosure by any of the 3 methods authorized by the statute. Additionally, when OSC informally refers a whistleblower disclosure to an agency IG, the whistleblower does not obtain the information he would through any of the

¹ See <http://whsknox.blogs.com/tva> for background information on how my concerns of “broken covenant” of Civil Service Reform Act of 1978, www.broken-covenant.org, impact nuclear safety at TVA.

three authorized referral mechanisms.

A review of OSC's Annual Reports to Congress finds they make no mention of referring disclosures to agency head per 1213(g)(2). Instead, OSC is exceeding its statutory discretion in making informal referrals to agency IG's. It is likely the NRC IG has received such informal referrals of whistleblower disclosures from OSC over the years, to the extent it has without objection, it enables OSC lawbreaking.

Even more importantly to NRC's mission for nuclear safety, for 24 years OSC has claimed, with no basis in law, that employees of (non-federal agency) nuclear facilities licensed by NRC cannot make disclosures to OSC per 5 U.S.C. section 1213(g)(1). So, while acknowledging this would require some moral courage, I respectfully suggest that you obtain resolution of the following:

- 1) Has OSC been breaking the law for many years in making discretionary informal referrals of current or former NRC employee disclosures to the NRC IG, instead of the NRC Commission per section 1213(g)(2)?
- 2) Can NRC Commission formally request OSC to make liberal use of its discretion to refer disclosures of current or former NRC employees to NRC Commission per section 1213(g)(2)?
- 3) Do employees of non-federal agency entities licensed by NRC have a statutory right to make disclosures involving violations of laws, rules, or regulations under NRC's enforcement jurisdiction to OSC per section 1213(g)(1)?
- 4) Can NRC Commission formally request OSC to make liberal use of its discretion to refer such section 1213(g)(1) disclosures to NRC Commission?

I *publicly* claim - as a licensed Professional Engineer, member of several major engineering societies and federal employee - that OSC is a 35 year-long lawbreaking fraud, the most corrupt and corrupting federal agency, relatively speaking at least (it is tiny with 110 employees) – in American history. OSC obeys no law it wishes to ignore and it makes up phony laws as it wishes – and America is much diminished and more threatened because of it, particularly involving nuclear safety, particularly at TVA.

I would welcome the NRC Commission taking formal exception of these public claims - because I welcome any objective opportunity to make my case, because I have the necessary moral courage to walk away from my “nice house and car” to do my duty to protect others. Thank you for whatever consideration you deem this “protected disclosure” to merit.

Respectfully,

_____/S/_____

Joe Carson, PE

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