Department of Energy
Washington, DC 20585

MAR - 4 2008

Mr. Jeffrey Burnette
102 Perry Road
Kingston, TN 37763

Re: OHA Case No. TBB-0071

Dear Mr. Burnette:

This letter concerns the Complaint of Retaliation that you filed with the Department of Energy (DOE) under 10 C.F.R. Part 708. On October 10, 2007, the Office of Hearings and Appeals (OHA) received your petition for Secretarial review of the August 30, 2007, jurisdictional appeal decision issued by the OHA Deputy Director. Under the Part 708 regulations, the Secretary will reverse or revise an appeal decision by the OHA only in extraordinary circumstances. 10 C.F.R. § 708.19.

In this case, the Whistleblower Program Manager (WP Manager) of the DOE's National Nuclear Security Administration (NNSA) Service Center located in Albuquerque, New Mexico, dismissed your Part 708 Complaint of Retaliation because it was untimely filed. You appealed that dismissal. After reviewing the facts in this matter, we upheld the dismissal. We found in the determination of August 30, 2007, that you had not alleged any retaliation in your Complaint that took place within 90 days prior to the filing of that Complaint. 10 C.F.R. § 708.14.

In your petition for Secretarial review, you again allege retaliations that appear to have been connected with earlier Complaints, which were filed in 2001 and 2002. These alleged retaliations include: coercion by the contractors to settle your previous Part 708 proceeding; delay of BWXT Y-12 employment; harassment and isolation "beginning early at Y-12;" denial of a pay raise and employment opportunities; loss of seven months salary and two weeks of accrued vacation in 2001; and lost reputation.

You have not explained why you did not file a timely complaint regarding these alleged retaliations. Nor have you specifically alleged any retaliation that took place within the 90 days preceding the filing of your 2006 Complaint of Retaliation. Accordingly, there is no basis for any further review of your

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Part 708 Complaint. Moreover, we fail to see any issue of an extraordinary nature warranting Secretarial review.

The Deputy Secretary of Energy has authorized me to send you this letter dismissing the petition for failure to demonstrate extraordinary circumstances.

Accordingly, the petition for review filed in Case No. TBB-0071 is hereby dismissed.

If you have any questions regarding this letter, please call Virginia Lipton of my staff at telephone number (202) 287-1436.

Sincerely,

Poli A. Marmolejos
Director
Office of Hearings and Appeals

cc: David S. Jonas
General Counsel
National Nuclear Security Administration

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