

June 9, 2003

EA-03-105

Mr. Thomas Coutu
Site Vice President
Kewaunee Nuclear Plant
Nuclear Management Company, LLC
N490 Hwy 42
Kewaunee, WI 54216-9511

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE
(NRC OFFICE OF INVESTIGATIONS REPORTS 3-2002-004 & 3-2002-020)

Dear Mr. Coutu:

This letter refers to the investigations conducted by the U. S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) into: 1) apparent deliberate failure by contractor employees to follow NRC Fitness-For-Duty requirements at the Kewaunee Nuclear Station; and 2) incomplete and inaccurate statements made by those employees. An investigation into alleged employment discrimination at the Point Beach Nuclear Power Plant was also conducted by OI. The synopsis from each OI report and a summary of the Kewaunee investigation are enclosed.

Based on the information developed during the OI investigation at the Kewaunee Nuclear Plant, an apparent violation of 10 CFR Part 26, "Fitness-For-Duty Program," is being considered for escalated enforcement in accordance with the "General Statement and Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The current Enforcement Policy is included at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**.

In summary, during July 2001, a superintendent for a contractor at the Kewaunee Nuclear Plant, deliberately failed to report and take action after he received information from several contractor employees that they smelled an odor of alcohol on a contract foreman. While the foreman apparently had access to the protected area of the plant, he was working in the contractor's fabrication shop, located in the owner controlled area outside of the protected area of the Kewaunee Nuclear Plant, when the FFD information was reported to the superintendent. Information from the OI investigation also disclosed that the superintendent deliberately provided incomplete and inaccurate information, to both a licensee investigator and to OI, about the FFD concern involving the foreman. The information was material to the NRC because both the licensee and OI were investigating alleged violations of the FFD regulation at the Kewaunee Nuclear Plant.

The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be advised that the number and characterization of the apparent violation may change as a result of further NRC review.

We have been in contact with you and Mr. R. Cleveland of your staff to schedule a Predecisional Enforcement Conference to discuss the apparent violations. The conference will be transcribed and closed to public observation. We will confirm the time and date of the conference after a mutually agreeable date has been scheduled.

We believe it is important for certain members of your staff, who were involved with these issues, to attend the conference. The requested individuals were specified during this above referenced call.

The decision to hold a predecisional enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. In addition, the conference is an opportunity for Nuclear Management Company (NMC) to provide its perspectives on: 1) the severity level of the apparent violation; 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.C.2 of the Enforcement Policy; and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII. The conference will provide an opportunity for you to provide your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision, including any misunderstanding of the facts as presented.

The Office of Investigations also conducted an investigation into alleged employment discrimination at the Point Beach Nuclear Plant. Allegedly, contractor employees were denied unescorted access to the Point Beach Nuclear Plant, and possibly other NRC-licensed facilities, because they had provided FFD information to other NRC-regulated facilities.

While the alleged employment discrimination at the Point Beach Plant was not substantiated by OI, several contractor employees involved in the Kewaunee FFD issues had their unescorted access to the Point Beach Plant denied. Therefore, NMC is requested to fully evaluate and provide information in its presentation concerning any potential "chilling effect" at any NMC facilities because of this FFD issue.

If you have any questions, please contact Mr. James R. Creed, Safeguards Program Manager, at (630) 829-9857.

In accordance with 10 CFR Part 2.790 of the NRC's "Rules of Practice," a copy of this letter with Enclosure 1 only will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Cynthia D. Pederson, Director
Division of Reactor Safety

Docket No. 50-305; 50-266; 50-301
License Nos. DPR-24; DPR-27; DRP-43

Enclosures: 1. Synopsis of Office of Investigations
 Reports No. 3-2002-04 and 3-2002-020
 2. Summary of Office of Investigations Report
 For Case No. 3-2002-04 **(Not for Public Disclosure)**

See Attached Distribution

In accordance with 10 CFR Part 2.790 of the NRC's "Rules of Practice," a copy of this letter with Enclosure 1 only will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Cynthia D. Pederson, Director
Division of Reactor Safety

Docket No. 50-305; 50-266; 50-301
License Nos. DPR-24; DPR-27; DRP-43

Enclosures: 1. Synopsis of Office of Investigations
Reports No. 3-2002-04 and 3-2002-020
2. Summary of Office of Investigations Report
For Case No. 3-2002-04 **(Not for Public Disclosure)**

See Attached Distribution

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cc w/encl 1 & 2:

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Operating Officer, WEPCo
John Paul Cowan, Chief Nuclear Officer
Alfred J. Cayia, Site-Vice President, Point Beach
K. Hoops, Plant Manager, Kewaunee
Joseph Jensen, Plant Manager, Point Beach

cc w/encl 1 **ONLY**:

D. Graham, P.E., Director, Bureau of Field Operations
Chairman, Wisconsin Public Service Commission
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Licensing Manager
D. Weaver, Nuclear Asset Manager
Gordon P. Arent, Manager, Regulatory Affairs
Jonathan Rogoff, Esquire General Counsel
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K. Duveneck, Town Chairman
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D. Graham, Director
Bureau of Field Operations
A. Bie, Chairperson, Wisconsin
Public Service Commission
S. Jenkins, Electric Division
Wisconsin Public Service Commission

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w/encl 1 & 2 **ENCLOSURE 2 IS EXEMPT FROM PUBLIC DISCLOSURE 10 CFR 2.790(a)**

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ENCLOSURE 1

SYNOPSIS

OI REPORT NO. 3-2002-004 [Kewaunee]

This investigation was initiated by the U. S. Nuclear Regulatory Commission, Office of Investigation (OI), Region III, on March 25, 2002, to determine whether contract welders failed to report Fitness-For-Duty (FFD) concerns about their Foreman, and to determine whether the contract Foreman deliberately failed to self-report and submit to FFD testing at the Kewaunee Nuclear Power Plant during a fall outage in 2001. Additionally, on August 5, 2002, OI was asked to determine whether the contract Mechanical and Civil Superintendent deliberately provided false information to the licensee's investigator relative to being told about the FFD concern involving the Foreman.

Allegation 1: Based upon the evidence developed, the investigation did not substantiate that contract welders deliberately failed to report FFD concerns. However, based upon the evidence developed, the investigation did substantiate that the contract Mechanical and Civil Superintendent deliberately failed to report an FFD concern involving a Foreman.

Allegation 2: Based upon the evidence developed, the investigation did not substantiate that the Foreman deliberately failed to self-report and submit to FFD testing.

Allegation 3: Based upon the evidence developed, the investigation substantiated that the contract Mechanical and Civil Superintendent deliberately provided false information to both OI and the licensee's investigator relative to being informed about the FFD concern involving a Foreman.

SYNOPSIS

OI REPORT NO. 3-2002-020 [Point Beach]

This investigation was initiated by the U. S. Nuclear Regulatory Commission, Office of Investigation (OI), Region III, on August 6, 2002, to determine whether a contract welder employed by Day and Zimmerman Nuclear Power Systems, was discriminated against by the licensee, Nuclear Management Company, LLC (NMC), for raising a fitness-for-duty concern while employed at the Kewaunee Nuclear Power Plant (Kewaunee) during an outage in 2001. The contract welder alleged that as a result of raising the FFD concern at Kewaunee, he was prevented from obtaining employment at NMC's Point Beach Nuclear Power Plant (Point Beach) by having his access denied at Point Beach and other NMC plants.

Based upon the evidence developed, the investigation did not substantiate that the contract welder was deliberately discriminated against for raising an FFD concern.