

January 29, 2004

NRC-04-003
10 CFR 2.201

Frank J. Congel, Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Kewaunee Nuclear Power Plant
Docket 50-305
License No. DPR-43

Reply to a Notice of Violation, EA-03-105

- Reference: 1) NRC Letter to NMC, Notice of Violation and Proposed Imposition of Civil Penalty - \$60,000 (NRC Office of Investigations Report No. 3-2002-004), dated December 30, 2003
- Reference: 2) NRC Letter to NMC, Predecisional Enforcement Conference (NRC Office of Investigations Reports 3-2002-004 and 3-2002-020), dated June 9, 2003
- Reference: 3) NRC Letter to NMC, Request for Information 01-A-1076, dated November 19, 2001
- Reference: 4) NMC Letter to NRC Region III Enforcement / Investigations Officer, Response to Request for Information 01-A-0176, dated February 8, 2002

Reference 1 transmitted a Notice of Violation and Proposed Imposition of Civil Penalty, regarding failure to effectively implement the Fitness for Duty (FFD) Program at the Kewaunee Nuclear Power Plant (KNPP). Previously, Reference 2 had transmitted the Office of Investigations Reports 3-2002-004 and 3-2002-020, which preceded the July 16, 2003, Predecisional Enforcement Conference, at which NMC presented a discussion of the circumstances relative to the subject FFD issues at KNPP.

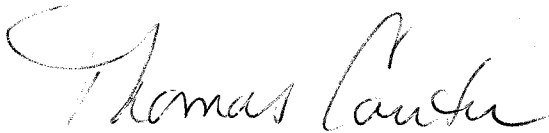
In accordance with 10 CFR 2.201, "Notice of Violation", Nuclear Management Company, LLD (NMC) provides its response to the identified violation, in the enclosure to this letter.

Mr. Frank J. Congel
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NMC does not contest the Notice of Violation. NMC will pay the civil penalty, via a separate letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or notice of electronic transfer; payable to the Treasurer of the United States in the amount of \$60,000.

This letter and enclosure contain no new commitments and no revisions to existing commitments. This letter and enclosure also do not include any personal privacy, proprietary, or safeguards information.

I declare under penalty of perjury that the foregoing is true and accurate. Executed on January 29, 2004.



Thomas Coutu
Site Vice President, Kewaunee Nuclear Power Plant
Nuclear Management Company, LLC

LFG

Enclosure

cc: Administrator, Region III, USNRC
Project Manager, Kewaunee, USNRC, NRR
Senior Resident Inspector, Kewaunee, USNRC
Document Control Desk, USNRC

ENCLOSURE

NUCLEAR MANAGEMENT COMPANY, LLC
KEWAUNEE NUCLEAR POWER PLANT
DOCKET 50-305

January 29, 2004

Letter from Thomas Coutu

To

Frank J. Congel, Director
Office of Enforcement

REPLY TO NOTICE OF VIOLATION AND
PROPOSED IMPOSITION OF CIVIL PENALTY

EA-03-105

3 Pages Follow

NOTICE OF VIOLATION:

During an NRC investigation concluded on November 29, 2002, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions", NUREG-1600, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 26.20 requires, in part, that each licensee subject to 10 CFR Part 26 establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of 10 CFR Part 26, including policies to address the abuse of legal drugs (e.g. alcohol).

10 CFR 26.24(a) requires, in part, that the licensee implement chemical testing programs for persons subject to 10 CFR Part 26 to provide a means to deter and detect substance abuse, including testing for-cause, i.e., as soon as possible after receiving credible information that an individual is abusing alcohol.

Kewaunee Nuclear Power Plant Nuclear Administrative Directive (NAD) 01.04, "Fitness for Duty Program", Revision C, November 16, 1999, Section 2.1 of NAD-01.04 provides, in part, that NAD 01.04 applies to all persons who have been granted unescorted access to the Kewaunee Nuclear Power Plant. NAD-01.04 states in Section 5.8, "Requirements", that effective monitoring and testing procedures will be implemented to provide reasonable assurance that personnel with access are fit for duty. Section 7 of NAD-01.04 lists the procedures that have been established to implement the Kewaunee Nuclear Power Plant Fitness for Duty Program. General Nuclear Procedure (GNP) 1.4.4, "Behavioral Observed Just Cause Testing," is one of the implementing procedures described in Section 7 of NAD-01.04.

Section 5 of GNP 1.4.4 provides, in part, that the licensee is committed to a program of continued observation of contractors for indication of any on-the-job behavior which may impair job performance. When such behavior is detected, corrective measures shall be taken, including an investigation of the circumstances and an evaluation of the risk involved in continuing unescorted access to the Kewaunee Nuclear Power Plant.

Contrary to the above, during July or August 2001, the licensee failed to implement effective monitoring procedures to provide reasonable assurance that personnel with access are fit for duty, and the licensee failed to conduct an investigation of the circumstances or evaluate the risk involved in continued unescorted access of an employee after detecting evidence of behavior which may have impaired the job performance of an employee who had unescorted access to the Kewaunee Nuclear Plant. Specifically, a supervisor of Day and

Zimmerman Nuclear Power Systems (D&Z), a contractor at the Kewaunee Nuclear Plant, detected the possible odor of alcohol on a D&Z employee. The supervisor was informed that the employee was a heavy drinker and that the employee was reputed to have an alcohol problem. However, the supervisor failed to take corrective measures including investigation of the circumstances or sending the employee to for-cause Fitness for Duty testing.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$60,000

ADMISSION OF THE ALLEGED VIOLATION:

NMC admits to the violation as stated above.

THE REASONS FOR THE VIOLATION:

The violation occurred due to the failure of contractor personnel at the Kewaunee Nuclear Power Plant (KNPP), to follow applicable regulations and procedures that implement the requirements of the Fitness for Duty (FFD) program.

Specifically, there was a failure on the part of the D&Z contractor supervisor to conduct an investigation of the circumstances and an evaluation of the risks related to continued unescorted access of an employee, after having detected the possible odor of alcohol on the employee. Further, the supervisor had been informed that the employee was reputed to have an alcohol problem, and failed to take corrective action. The supervisor did not detect signs of impairment during a behavioral observation of the employee. Therefore, the supervisor did not report the incident to Security, did not investigate the matter, and did not send the employee to for-cause FFD testing.

THE CORRECTIVE STEPS THAT HAVE BEEN TAKEN AND THE RESULTS ACHIEVED:

In response to the request for information given in NRC letter dated November 19, 2001 (Reference 3), NMC arranged to have an independent investigator perform a review of the FFD concern. The initial investigation was completed, and a report was submitted to NMC on January 7, 2002. Due to additional issues that were identified in the course of this investigation, NMC requested that the investigative consultant perform a supplemental investigation. That supplemental report was received on January 30, 2002.

A summary of the findings from these reports was provided as a response to Reference 3, and was sent to the NRC on February 8, 2002 (Reference 4). Based on NMC's investigative efforts, the following actions were taken:

- On December 19, 2001 the D&Z supervisor was interviewed. He was coached and counseled regarding his FFD program responsibilities, and NMC's expectations in this area.
- NMC access authorization forms 4G1, "Initial Personal History Statement", 4G2, "NMC Reinstatement Personal History Statement", and 4G5, "Current Non-NMC Site / Last Access <30 Days / Approved Contractor Personal History Statement" were revised to query whether a prospective applicant for unescorted access has ever had a history or medical diagnosis of alcohol or other substance abuse. The responsibilities of individual workers were also expanded to include immediately reporting the smell of alcohol to supervision. These changes were initiated on January 11, 2002.
- An FFD program reminder was issued to all site employees on January 11, 2002. The program reminder re-states the appropriate actions for individuals to take if they suspect that another worker may not be fit to work.
- A KNPP general employee training test question was revised to ask the specific question of when an employee should immediately contact his/her supervisor and report a situation where a worker is believed to have the odor of alcohol on his/her breath.
- KNPP procedure GNP-01.04.04, "Behavioral Observed Just Cause Testing / Continual Behavior Observation Program", was revised to contain additional details on possible indicators of alcohol misuse, and requirements for reporting an individual who smells of alcohol to supervision. This revision was issued on January 24, 2002.

THE CORRECTIVE STEPS THAT WILL BE TAKEN TO AVOID FURTHER VIOLATIONS:

NMC will be conducting an assessment of D&Z's actions in response to the NRC violation.

THE DATE WHEN FULL COMPLIANCE WILL BE ACHIEVED:

Full compliance has been achieved.

January 29, 2004

NRC-04-010
10 CFR 2.201

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U.S. Nuclear Regulatory Commission
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Kewaunee Nuclear Power Plant
Docket 50-305
License No. DPR-43

Payment of Civil Penalty of \$60,000 -- EA-03-105

Reference: 1) NRC Letter to NMC, Notice of Violation and Proposed Imposition of Civil Penalty - \$60,000 (NRC Office of Investigations Report No. 3-2002-004), dated December 30, 2003

Reference: 2) NMC Letter to Frank J. Congel, NRC, Reply to a Notice of Violation, EA-03-105, dated January 29, 2004

Reference 1 transmitted a Notice of Violation and Proposed Imposition of Civil Penalty (EA-03-105). Reference 2 provided the Nuclear Management Company, LLD (NMC) / Kewaunee Nuclear Power Plant response to Reference 1.

Pursuant to these referenced documents, an electronic transfer via FedWire in the amount of \$60,000 payable to the Treasurer of the United States has been initiated.



Thomas Coutu
Site Vice President, Kewaunee Nuclear Power Plant
Nuclear Management Company, LLC

LFG

cc: Administrator, Region III, USNRC
Project Manager, Kewaunee, USNRC, NRR
Senior Resident Inspector, Kewaunee, USNRC
Document Control Desk, USNRC