

March 17, 2004

EA-03-181

Mr. Gary Van Middlesworth
Vice President - Nuclear Assessment Programs
Site-Vice President
Point Beach Nuclear Plant
Nuclear Management Company, LLC
6610 Nuclear Road
Two Rivers, WI 54241-9516

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$60,000 (NRC SUPPLEMENTAL INSPECTION REPORT 05000266/2003007;
05000301/2003007)

Dear Mr. Van Middlesworth:

This refers to the supplemental inspection conducted between July 28 and December 16, 2003, at the Point Beach Nuclear Plant. The inspection was performed in accordance with NRC Inspection Procedure (IP) 95003, "Supplemental Inspection for Repetitive Degraded Cornerstones, Multiple Degraded Cornerstones, Multiple Yellow Inputs, or One Red Input." The purpose of this inspection was to review corrective actions for the Red finding associated with the auxiliary feedwater (AFW) and instrument air systems and for the inspection finding associated with the potential common mode failure of the AFW pumps because of plugging of the recirculation line pressure reduction orifices. This second finding associated with the AFW system was determined to be Red for Unit 2 and Yellow for Unit 1. The inspection also included an assessment of your staff's performance in the Reactor Safety Strategic Performance Area, which included the effectiveness of your correction action, emergency preparedness (EP), and engineering programs.

As a result of the EP phase of the supplemental inspection, an apparent violation of NRC requirements was identified involving changes made to the Emergency Action Level (EAL) scheme that reduced the effectiveness of the Emergency Plan without requesting and receiving prior NRC approval. The apparent violation was discussed with your staff at the conclusion of the onsite portion of the EP phase of the supplemental inspection on August 27, 2003, during a telephone conference call on December 1, 2003, and in a December 2, 2003, letter. In addition, the supplemental inspection report was transmitted to you on February 4, 2004.

On January 13, 2004, a predecisional enforcement conference was conducted in the Region III office with you and members of your staff to discuss the apparent violation, its significance, its root causes, and your corrective actions.

Based on the information developed during the inspection and the information that you provided during the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the December 2, 2003, letter and the subject inspection report. During the emergency preparedness phase of the supplemental inspection, the NRC identified a significant deviation in the EAL scheme from the version approved by the NRC in 1984. The deviation involved changes to eight EALs in 1998 and 1999 that decreased the effectiveness of the Emergency Plan in that emergency conditions that would have resulted in classification at the General Emergency, Alert, and Notification of Unusual Event levels under the 1984 approved plan would now result in a lesser classification or no classification. The 1998 EAL change, involving a General Emergency classification, is cited in the enclosed Notice, but is not considered in the civil penalty assessment process due to the fact that it occurred over five years ago.

The failure to receive NRC approval before changing EALs that decrease the effectiveness of the Emergency Plan is a significant safety issue. The failure to submit the changes and receive NRC approval prevents the NRC from performing its regulatory function and potentially prevents the NRC from ensuring the health and safety of the public. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. During the predecisional enforcement conference your staff provided corrective actions for the apparent violation that included: (1) hiring an experienced corporate senior emergency planning specialist to provide assistance to the emergency planning staff; (2) changing the Point Beach emergency planning staff and providing training to the new staff on emergency preparedness requirements; (3) revising the Emergency Plan change process to require approval by the station regulatory affairs department and the plant operations review committee; and (4) planning to revise the EAL scheme to the NRC-approved scheme in Nuclear Energy Institute (NEI) 99-01, "Methodology for Development of Emergency Action Levels," Revision 4.

However, we noted for item (1) above, that the specialist was hired before the August 2003 identification by the NRC of the EAL problem and had been involved in the station self-assessment of emergency preparedness conducted earlier in 2003 that had failed to identify the EAL problem. For item (2), this action was also initiated before the August 2003 identification of the EAL problem by the NRC and the effectiveness of the training has not been assessed. For item (3), although this action was completed after the identification of the EAL problem by the NRC, it was ineffective in identifying the inadequacy of the November 25, 2003, submittal to the NRC to revise the Emergency Plan, including several of the EALs that were identified in August 2003 as in need of revision. As documented in our letter dated January 30, 2004, NRC staff informed your staff that the November 25, 2003, submittal was not of sufficient detail to provide a "stand alone" justification to support NRC review. As a result, on January 16,

2004, you requested to withdraw your proposed changes. For item (4), you anticipate that this long-term corrective action, which includes submitting the revised EAL scheme to the NRC for approval by or around June 2004, will be completed as soon as possible.

During the predecisional enforcement conference, it became apparent that appropriate immediate corrective action had not been taken to restore the subject EALs to compliance. We initiated discussions with your staff on January 13, 2004, to emphasize the need to return the station to compliance with regulatory requirements. Subsequently, between January 13 and January 16, 2004, the EALs were revised and training was provided to the appropriate plant staff. On January 16, 2004, the NRC confirmed that actions were completed to correct the subject eight EALs, which restored them to regulatory compliance.

Credit is not warranted for corrective action, since corrective actions implemented to prevent recurrence were ineffective and corrective actions to bring the plant into compliance were not completed until January 16, 2004. Therefore, to emphasize the importance of prompt, effective and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$60,000 for the Severity Level III violation.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/ RA /
James L. Caldwell
Regional Administrator

Docket No. 50-266; 50-301
License No. DPR-24; DPR-27

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty
NUREG/BR-0254 Payment Methods (Licensee only)

cc w/encl: R. Kuester, President and Chief
 Executive Officer, We Generation
 J. Cowan, Executive Vice President
 Chief Nuclear Officer
 D. Cooper, Senior Vice President, Group Operations
 D. Weaver, Nuclear Asset Manager
 Plant Manager
 Regulatory Affairs Manager
 Training Manager
 J. Rogoff, Vice President, Counsel & Secretary
 K. Duvencek, Town Chairman
 Town of Two Creeks
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 J. Kitsembel, Electric Division
 Public Service Commission of Wisconsin
 State Liaison Officer

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J. Dyer, NRR

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Enforcement Coordinators

RI, RII, RIII, RIV

R. Franovich, NRR

Resident Inspector

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Nuclear Management Company, LLC
Point Beach Nuclear Plant

Docket No. 50-266; 50-301
License No. DPR-24; DPR-27
EA-03-181

During an NRC inspection conducted between July 28 and December 16, 2003, 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 50.54(q) requires, in part, that a licensee authorized to possess and operate a nuclear power reactor follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b) and the requirements in appendix E of this part. The licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to this part. Proposed changes that decrease the effectiveness of the approved emergency plans may not be implemented without application to and approval by the Commission.

10 CFR 50.47(b) requires that onsite emergency response plans for nuclear power reactors must meet each of 16 planning standards. Planning standard 4 requires, in part, that a standard emergency classification and action level scheme is in use by the licensee.

Contrary to the above, from October 1998 through December 1999, the licensee made changes, without Commission approval, to eight emergency action levels (EALs) in its Emergency Plan that decreased the effectiveness of the Emergency Plan and resulted in use of a nonstandard scheme of EALs. The EALs that were changed were originally approved by the NRC in 1984 and were consistent with the standard scheme in Revision 1 to NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," (November 1980). Specifically:

A. Examples Assessed a Civil Penalty

1. EAL GE-5(b), as approved by the NRC in 1984, required, in part, the declaration of a GE for a transient causing loss of all feed/condensate and all AFW for greater than one hour. With the revision of this EAL on December 29, 1999, in Revision 33 to Emergency Plan Implementing Procedure (EPIP) 1.2, the current EAL required a loss of vital alternating current for greater than 15 minutes, and replaced the greater than one hour loss of all feed/condensate requirement with steam generator level and AFW flow criteria that would indicate a significant loss of feed. The addition of the loss of a vital electrical power criterion is a more restrictive condition, thereby decreasing the effectiveness of the EP.

2. EALs A-18a and A-18b involved "other hazards being experienced or projected." The first EAL involved an aircraft crash in the protected area, and the second involved a missile impact from any source by visual observation. With the revision of these EALs on December 29, 1999, in Revision 33 to EPIP 1.2, both EALs had a more restrictive condition added stating that the hazard was "affecting operability of one (1) train of a safety system," thereby decreasing the effectiveness of the EP.
3. EALs UE-14c and UE-14d, involved "other hazards," including explosion and toxic/flammable gas release. While the original EALs included the owner controlled area, these EALs were revised on December 29, 1999, in Revision 33 to EPIP 1.2, to exclude areas of the site outside the protected area. This change resulted in a more restrictive condition, thereby decreasing the effectiveness of the EP.
4. EAL UE-13 involved a tornado sighting and was applicable if a tornado was visible from the site. With the revision of this EAL on December 29, 1999, in Revision 33 to EPIP 1.2, the EAL was changed to make it applicable only if a tornado was within the protected area or switchyard. This change resulted in a more restrictive condition, thereby decreasing the effectiveness of the EP.
5. The EAL scheme approved by the NRC in 1984 included an NOUE (Category 18a) for uncontrolled control rod withdrawal. This EAL was removed from the EAL scheme on December 29, 1999, in Revision 33 to EPIP 1.2, with an explanation that an uncontrolled rod withdrawal event was encompassed in the Alert EAL for a Reactor Protection System (RPS) failure. However, the EALs for RPS failure did not address an uncontrolled rod withdrawal and there were no EALs in the current EAL scheme that addressed an uncontrolled control rod withdrawal. This change decreased the effectiveness of the EP.

B. Example Not Assessed a Civil Penalty

1. EAL GE-1, as approved by the NRC in 1984, required, in part, the declaration of a general emergency if a field dose rate corresponding to a 5 rem committed dose equivalent to the thyroid (for 1 hour of inhalation) was measured. With the revision of this EAL on October 28, 1998, in Revision 32 to EPIP 1.2, the current EAL does not require a GE declaration directly from a field dose rate measurement corresponding to a 5 rem committed dose equivalent to the thyroid (for 1 hour of inhalation). This revision resulted in a less conservative criterion for a GE declaration, thereby decreasing the effectiveness of the Emergency Plan (EP).

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

Pursuant to the provisions of 10 CFR 2.201, Nuclear Management Company, LLC (licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-03-181" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown.

Within the same time as provided for the response required above under 10 CFR 2.201, the licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the licensee fail to answer within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty, an order imposing the civil penalty will be issued. Should the licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation; EA-03-181, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Frank Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 17th day of March 2004.