



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

November 5, 2004

[]
SUBJECT: ALLEGATION NO. RIII-04-A-0061

Dear []

This letter refers to our letter dated June 8, 2004, that stated we were reviewing your concerns which related to activities at the Point Beach Nuclear Power Plant. You were concerned: (1) that supervisors and maintenance crews are working beyond the 72 hours allowed; and (2) that there was a chilled communication environment at the facility. Since our June 8th letter, NRC inspectors have completed their inspection of these issues and the results of our inspections are enclosed. Based on the results of these inspections, we did not substantiate that: (1) supervisors and maintenance crews are working beyond the 72 hours allowed; and (2) that there is a chilled communication environment at the facility.

Thank you for informing us of your concerns. We take our safety responsibilities to the public very seriously and appreciate your willingness to bring these issues to our attention. Based on the results of our inspections, we consider the issues closed. If you disagree with our conclusion or wish to provide additional information, please contact the Region III Office Allegation Coordinators. The Region III Office Allegation Coordinators are Jim Heller and Ken Lambert. They can be contacted by writing to the U.S. Nuclear Regulatory Commission, Region III, at 2443 Warrenville Road, Suite 210, Lisle, Illinois 60532-4352, or calling the NRC Region III switchboard toll free at (800) 522-3025 or the NRC Safety Hotline at (800) 695-7403. Mr. Heller's E-mail address is JKH@nrc.gov and Mr. Lambert's E-mail address is KJL@nrc.gov. If you E-mail them, please send the information to both E-mail addresses and their common E-mail address which is OAC3@nrc.gov.

Sincerely,

Steven A. Reynolds, Acting Director
Division of Reactor Projects

Enclosures: 1. Closure information
2. 10 CFR 50.7 Employee Protection

cc w/enclosure 1: AMS File No. RIII-04-A-0061

EXPRESS MAIL

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 7C
FOIA-2004-0282

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Concern 1:

You are concerned that supervisors and maintenance crews are working beyond the 72 hours allowed and becoming tired enough that they are making mistakes. You stated that the supervisors and crews in the mechanical and electrical maintenance department have been charging excessive hours to turnover to avoid the need for a waiver or writing a corrective action report when the working hour limit was exceeded.

NRC Evaluation:

A Region III technical inspector reviewed the hours recorded for selected individuals and compared these hours with the security gate entry and exit times. The time frame for the review was from February until May 2004, and included samples from all departments and all levels of employment. The review included work hours greater than 12 hours in 24, 16 hours in 48, and 72 hours in seven days. The purpose of the review was to determine if the hours selected individuals worked at the facility exceeded the regulatory guidelines. A review of the hours indicated that even though employees were on site a lot of hours, the individuals were within the procedural limits of work hours. The licensee considers one hour on either side of the work day as turnover time and according to our guidelines turnover time is excluded from the guideline limits. The inspector found that 14 hours was the exception; most of the people worked 12.5 to 13 hours. The security gate entry and exit times matched the hours worked on the time cards. The inspectors found no indication of excessive hours or continuous days worked was being required by the licensee. Based on the results of our inspection, we did not substantiate that supervisors and maintenance crews who are subject to the NRC required working hour limitation are working beyond the 72 hour limit.

The conversation record Mr. Morris prepared following your May 14, 2004, interview indicated that workers were becoming tired and making mistakes. The NRC inspection staff routinely reviews condition reports to look for trends that could be indicative of a performance issue, such as fatigue. During these reviews we have not identified any trends that indicate fatigue is causing performance problems.

You did not provide examples to support your statements that supervisors and maintenance crews are working beyond the 72 hours allowed and becoming tired enough that they are making mistakes. Without examples to support either claim we are unable to perform additional reviews. If you want us to continue our evaluation of this concern, we need examples. If you have recent examples, you can provide them to Mr. Morris or to one of the allegation coordinators at the address provided in the letter. Based on the above, we consider this concern closed.

Concern No. 2:

You were concerned about being fired for talking to the NRC, but came to the NRC because of your concern for a safe work environment. You stated that you were afraid to go to management and the Employee Concern Program coordinator because you believed that people who raise concerns are marked for termination. You stated that one of the individuals who was fired because of the hot leg vent incident had previously been marked for dismissal after raising dry cask storage concerns.

NRC Evaluation:

A Region III technical inspector interviewed 39 plant employees from various work groups. The purpose of the interviews was to determine if a chilled communication environment existed such that employees would not raise safety concerns. The interviews determined that no one interviewed expressed a hesitancy in raising nuclear safety issues through their management (typically, through the corrective action program) and only one person stated that he would not raise a safety issue through the station Employee Concerns Program. Two workers stated that while they had no reluctance to raise nuclear safety issues, they did have doubts as to the adequacy of the resolution by upper station management of the issues.

The inspector also interviewed the site Employee Concerns Program manager and reviewed records and statistics associated with the program. This effort indicated that the program is well utilized by plant staff. Since the program is not mandated by the NRC, we did not evaluate the results provided by the site Employee Concerns Program manager to the individuals who raised the concerns.

Similar to the inspector's observation, a recent consultant-led, licensee assessment of the safety culture at the plant in which 72 workers were interviewed concluded, in part, that vertical trust is significantly strained at the Point Beach Nuclear Plant (PBNP). In this assessment, the perceived circumstances of the resignation of the four Senior Reactor Operators were given as one of the main examples of why workers do not trust station upper management. The assessment also stated, in part, that the trust issue may represent a leading indicator of future reluctance to raise important concerns to supervisors or through the corrective action program.

After we completed our interviews, we forwarded the concern to the licensee for its review and response. The licensee responded that its safety culture assessment indicated that employees would raise recognized safety concerns. The licensee further stated that employees are encouraged to raise safety concerns via various means, including their supervisor, the corrective action program, or the NRC. We note that this assertion has been corroborated by observations of NRC inspectors. In addition, the licensee stated that no employee has ever been terminated for using the Employee Concerns Program. To address the problem areas identified in its assessment of safety culture at PBNP, the licensee has developed a communications plan to, in part, increase the engagement of station senior management and the workforce.

Aspects Of The Concern That Were Not Evaluated:

You stated that one of the individuals who was fired because of the hot leg vent incident had previously been marked for dismissal after raising dry cask storage concerns. This is a third party allegation of discrimination. We do not investigate third party allegations of discrimination since: (1) we need permission from the individual who was the subject of the alleged discrimination to release his or her name during the investigation; and (2) we need specific first hand information that only the individual involved can provide. I encourage you to have the individual contact me directly so that the individual and I can discuss the alleged discrimination. If the individual contacts me, I will open a new allegation file and only communicate with that individual.

You also stated that you were concerned about being fired for talking to the NRC, but came to the NRC because of your concern for a safe work environment. Your concern about being fired

for talking to the NRC appears to be based on the speculation of what may happen if you talk to the NRC. We do not process issues based on speculation of an action that may happen in the future. However, we do have regulations that prohibit employment discrimination by an employer against individuals who have raised safety concerns. I have included, as Enclosure 2, a copy of 10 CFR 50.7, "Employee Protection," for your reference. If you have more information to support your concern that you will be the subject of discrimination or you believe you are the subject of discrimination, please contact Jim Heller or Ken Lambert so that either Mr. Heller or Mr. Lambert can discuss the issue with you. If you contact them, please be prepared to discuss the following:

1. What action will be (or was) taken against you? (For example, fired, laid off, demoted, or transferred)
2. When will (or was) the action taken?
3. What issues did you raise?
4. When did you raise the issue?
5. To whom did you raise the issue?
6. Did you inform anyone from your management or the NRC of your concern?
7. If you informed the NRC, was your management aware that you informed the NRC?
8. Why do you believe the action taken (or will be taken) against you was the result of your raising these safety issues?
9. Do you object to the release of your name during an NRC investigation?

NRC Conclusion:

Based on the results of our inspection effort, we did not substantiate that there is a chilled communication environment at the facility. However, we concluded that some work groups do not have confidence that issues they raise will be appropriately resolved and these operators may stop identifying issues because there are trust issues between Operations personnel and Operations and station senior managers. We believe that this lack of trust is a potential distraction to licensed operators; therefore, the NRC will review the licensee's implementation of its proposed actions to address these issues. The NRC's review will be conducted as part of our additional inspection efforts to assess NMC's performance improvement initiatives, as documented in the April 21, 2004, Confirmatory Action Letter. Also, as part of the NRC's day-to-day inspection activities, our resident inspectors will continue to monitor the performance of Operations personnel and station senior management. Based on the above, we consider this concern closed.

50.7 Employee Protection

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

- (i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;
- (ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;
- (ii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;
- (iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.
- (v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

- (c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—
- (1) Denial, revocation, or suspension of the license.
 - (2) Imposition of a civil penalty on the licensee or applicant.
 - (3) Other enforcement action.
- (d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.
- (e) (1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.
- (2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415-5877, via e-mail to forms@nrc.gov, or by visiting the NRC's Web site at <http://www.nrc.gov> and selecting forms from the index found on the home page.
- (f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

SUBJECT: ALLEGATION NO. RIII-04-A-0061

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Sincerely,

/RA/ S. West for

Steven A. Reynolds, Acting Director
Division of Reactor Projects

- Enclosures: 1. Closure information
2. 10 CFR 50.7 Employee Protection

cc w/enclosure 1: AMS File No. RIII-04-A-0061

EXPRESS MAIL

*SEE PREVIOUS CONCURRENCE

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NAME	Heller		Loeber		Berson		Reynolds	
DATE	11/1/04		11/1/04		11/3/04		11/05/04	

OFFICIAL RECORD COPY

[Redacted]

JC

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DATE	10/25/04		10/24		10/14		10/14	

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[Redacted]

7C

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NAME	Heller	<input checked="" type="checkbox"/>	Louden	<input type="checkbox"/>	Berson	<input type="checkbox"/>	Reynolds	<input type="checkbox"/>		<input type="checkbox"/>
DATE	10/25/04		10/ / 4		10/ / 4		10/ / 4		10/ / 4	

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