

October 27, 2005

EA-05-191

EA-05-192

Mr. Dennis L. Koehl
Site Vice President
Point Beach Nuclear Plant
Nuclear Management Company, LLC
6590 Nuclear Road
Two Rivers, WI 54241-9516

SUBJECT: POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2 - NRC INSPECTION
REPORT NOS. 05000266/2005-017(DRS); 05000301/2005-017(DRS) AND
OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-038; PRELIMINARY
WHITE FINDING

Dear Mr. Koehl:

This letter refers to inspections conducted between August 1, 2002, and September 16, 2005, by the U. S. Nuclear Regulatory Commission (NRC) and an investigation completed on February 18, 2003, by the NRC Office of Investigation (OI) regarding activities at the Point Beach Nuclear Power Plant. The purpose of the inspection and the investigation was to evaluate activities associated with your staff's conduct and documentation of internal critiques of emergency preparedness (EP) drills and exercises. A summary of the OI investigation is enclosed.

On August 1, 2002, NRC inspectors observed your staff conduct an emergency preparedness (EP) drill and perform an internal critique of the drill. On August 26, 2002, your staff presented to the inspectors the results of your internal critique of the drill. Based upon their independent observations of the EP drill and your staff's presentation of its internal critique results, the inspectors identified a concern with regard to the adequacy of your staff's critique of the August drill. Specifically, the inspectors noted that your staff concluded that the August EP drill participants had successfully conducted activities associated with performance indicator (PI) opportunities involving the timely declaration of an Alert classification and accurate notifications to the county and State regarding a Site Area Emergency declaration. However, based upon their independent observations of the August drill, the inspectors concluded that the August EP drill participants had not successfully conducted the activities associated with these two PI opportunities. Pending resolution of the apparent differing assessments, the inspectors documented the issue as an unresolved item (URI), URI 05000266/2002-010-04; 05000301/2002-010-04, in NRC Inspection Report 05000266/2002-010; 05000301/2002-010, dated October 30, 2002.

During the week of November 18, 2002, the NRC conducted an Inspection Procedure (IP) 95001 Supplemental Inspection to assess your corrective actions for a previous White Finding associated with a February 2002 EP exercise. The previous White Finding involved your staff's failure to conduct an adequate critique of EP activities during a February 2002 EP exercise.

As a part of the November 2002 inspection, the inspectors also conducted a follow-up review of the issues associated with the August 2002 EP drill, including URI 05000266/2002-010-04; 05000301/2002-010-04. As a part of the follow-up review, the inspectors determined that the licensee staff had made an accurate notification to the county and State with regard to the Site Area Emergency declaration. Therefore, this aspect of the URI was closed. The EP Manager also provided the inspectors with a copy of an EP drill critique record dated August 23, 2002, and associated with the August 2002 EP drill's unresolved item. The EP Manager indicated to the inspectors that the August 2002 EP drill critique record documented that the licensee staff had self-identified the untimely Alert declaration as a part of its internal critique efforts and prior to the NRC identifying the issues.

Since the licensee did not previously provide the inspectors with the August 2002 EP drill critique record, the inspectors were concerned with the veracity of the document. As a result, the NRC OI initiated an investigation (OI Case No. 3-2002-038) into potential wrongdoing associated with the licensee providing the NRC with incomplete and inaccurate information on or about November 20, 2002. The OI investigation was completed in February 2003 and concluded that the licensee staff deliberately provided the NRC with incomplete and inaccurate information when the EP Manager and EP Coordinator created a false critique record associated with the August 2002 EP drill and subsequently provided that document to NRC inspectors during the week of November 18, 2002.

On March 11, 2003, the OI forwarded its Report of Investigation (ROI) associated with this case to the Office of the U.S. Attorney, Eastern District of Wisconsin. On June 23, 2005, the EP Manager appeared in the United States District Court, Eastern District of Wisconsin, and entered a plea of guilty to having knowingly made and delivered a writing to the NRC, a document that contained false statements. The EP Manager was sentenced to one year probation, a monetary penalty, and was ordered to refrain from involvement in any NRC-licensed activities. The U.S. Attorney's Office did not prepare charges against the EP Coordinator.

Based upon the inspection and investigation results, the NRC identified a finding associated with the licensee's failure to self-identify its untimely declaration of an Alert classification associated with the August 2002 EP drill. The finding was assessed using the EP Significance Determination Process (SDP) as outlined in Appendix B to NRC Manual Chapter (MC) 0609. Because the finding occurred in August 2002, the NRC evaluated the finding using both MC 0609, Appendix B revision in effect in August 2002, and the current MC 0609, Appendix B revision. Using the August 2002 and current revisions of the MC 0609, Appendix B EP SDP, the NRC preliminarily determined that the licensee's failure to self-identify the untimely declaration of an Alert classification during the August 2002 EP drill to be a White Finding. The final resolution of this finding will convey the increment in the importance to safety by assigning the corresponding color (i.e., (White) a finding with some increased importance to safety, which may require additional NRC inspection; (Yellow) a finding with substantial importance to safety that will result in additional NRC inspection and potentially other NRC actions; or (Red) a finding of high importance to safety that will result in increased NRC inspection and other NRC action).

The finding was preliminarily considered to have a low-to-moderate safety significance (White) because the license failed to self-identify its untimely declaration of an Alert classification, an activity associated with Risk Significant Planning Standards (RSPS) described in 10 CFR 50.47(b)(4) and (5), and was associated with a drill or exercise.

As a part of a 2003, multi-functional IP 95003 inspection of activities at the Point Beach Nuclear Power Plant, the NRC conducted a detailed review of your emergency preparedness program, including your corrective actions associated with the previous failures to self-identify RSPS and performance indicator issues during EP drills and exercises. The results of these inspection efforts and your corrective actions are documented in NRC Inspection Report Nos. 05000266/2003-007 and 05000301/2003-007, dated February 4, 2004. The NRC also conducted follow-up inspections associated with a Confirmatory Action Letter that included your EP program. The results of these inspections efforts and your corrective actions are documented in NRC Inspection Reports Nos. 05000266/2004-007 and 05000301/2004-007, dated November 8, 2004, and 05000266/2005-009 and 05000301/2005-009, dated August 2, 2005. Based upon these inspection efforts, the NRC determined that you implemented appropriate corrective actions for the issues associated with this preliminary White Finding.

The NRC has also determined that the preliminary White Finding is an apparent violation of NRC requirements and is being considered for escalated enforcement action in accordance with the Enforcement Policy. Specifically, 10 CFR 50.47(b)(14) requires a licensee to correct deficiencies identified during drills and exercises. The licensee's initial failure to identify and implement corrective actions for its untimely declaration of the Alert classification during the August 2002 EP drill was determined to be an apparent violation of 10 CFR 50.47(b)(14). The current NRC Enforcement Policy is included on the NRC's website at www.nrc.gov/OE.

In addition to the preliminary White Finding and associated apparent violation, the NRC also identified an apparent violation of 10 CFR 50.9, "Completeness and Accuracy of Information," associated with incomplete and inaccurate information the licensee provided to the NRC in a falsified critique record associated with the August 2002 EP drill. The licensee provided the falsified critique record to NRC inspectors on November 20, 2002. Specifically, the falsified critique record for the August 2002 EP drill indicated that the licensee had self-identified the untimely declaration of an Alert emergency classification. However, the OI investigation determined that the EP Manager and the EP Coordinator deliberately altered the critique record to indicate that the untimely Alert classification declaration was self-identified by the licensee as a part of its formal critique process. The information is material to the NRC because, the NRC relies, in part, on the licensee's conduct and self-critiquing of EP drills and exercises to ensure the licensee maintains an effective emergency preparedness and response capability.

In a letter to the NRC, dated May 16, 2003, the licensee documented the corrective actions it had taken based upon its own internal investigation of the EP Manager and the EP Coordinator's November 2002 deliberate falsification of the August 2002 EP drill and providing of the falsified record to the NRC.

Based upon information developed during the NRC inspections and investigation and provided in your letter dated May 16, 2003, we believe that we have sufficient information to make a final

significance determination for the preliminary White Finding and to determine the appropriate significance and enforcement actions for the apparent violations. However, before we make a final decision on these matters, we are providing you an opportunity to present to the NRC your perspectives on the facts used by the NRC to arrive at the finding and its significance, and the apparent violations and their significance at a combined regulatory and predecisional enforcement conference (conference) or through the submittal to the NRC of your position on the finding and the apparent violations in writing. If you choose to request a conference, it should be held within 30 days of the receipt of this letter and we encourage you to submit supporting documentation at least one week prior to the conference in an effort to make the conference more efficient and effective. If a conference is held, that portion of the conference associated with the White Finding and the associated apparent violation will be open for public observation. The portion of the conference associated with the 10 CFR 50.9 apparent violation will be closed for public observation because it involves an OI investigation. If you decide to submit only a written response, such submittal should be sent to the NRC within 30 days of the receipt of this letter.

Please contact Mr. Kenneth Riemer at (630) 829-9757 within 10 business days of the receipt of this letter to notify the NRC of your intentions. If we have not heard from you within 10 days, we will continue with our significance determination and enforcement decisions. You will be advised by separate correspondence of the results of our deliberations of this matter.

Since the NRC has not made a final determination in this matter, a Notice of Violation is not being issued for the inspection finding or the apparent violations at this time. In addition, please be advised that the number and characterization of apparent violations described above may change as a result of further NRC review.

Instead of a conference or a written response, you may request alternative dispute resolution (ADR) with the NRC for the apparent violation associated with the deliberate falsification of the EP drill critique records. Alternate dispute resolution is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process (the NRC and the licensee) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Generally, the NRC is willing to discuss the resolution of three potential issues: 1) whether a violation occurred; 2) the appropriate enforcement action; and 3) the appropriate corrective actions for the violation(s). Additional information concerning the NRC's pilot program can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at D. Koehl

607-255-1124 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. You may also contact Nick Hilton, Office of Enforcement, at (301) 415-3055 for additional information.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (if you choose to provide one) will be made 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), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

Mark A. Satorius, Director
Division of Reactor Projects

Docket Nos. 50-266; 50-301
License Nos. DPR-24; DPR-27

Enclosure: As stated

cc w/enclosure:

F. Kuester, President and Chief Executive Officer, We Generation
J. Cowan, Executive Vice President
Chief Nuclear Officer
D. Cooper, Senior Vice President, Group Operations
J. McCarthy, Site Director of Operations
D. Weaver, Nuclear Asset Manager
Plant Manager
Regulatory Affairs Manager
Training Manager
Site Assessment Manager
Site Engineering Director
Emergency Planning Manager
J. Rogoff, Vice President, Counsel & Secretary
K. Duveneck, Town Chairman
Town of Two Creeks
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Public Service Commission of Wisconsin
J. Kitsembel, Electric Division
Public Service Commission of Wisconsin
State Liaison Officer

D. Koehl

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SUMMARY
OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-038

The Office of Investigations (OI) Report No. 3-2002-038 involves the Nuclear Management Company (NMC) former Emergency Preparedness (EP) Manager at the Point Beach Nuclear Power Plant (Point Beach) and the Kewaunee Nuclear Power Plant (Kewaunee) and the former EP Coordinator at Kewaunee and the creation of a document, on or about November 15, by those individuals, containing inaccurate information regarding licensee performance during an NRC observed EP drill at Point Beach on August 1, 2002.

During the August 2002 EP drill, NRC inspectors identified that Point Beach managers participating in the EP drill did not declare an Alert classification within the prescribed 15 minutes, an apparent White finding under the NRC's Significance Determination Process (SDP). The inspectors also identified that the licensee's critique of the EP drill did not include its self-identification of the untimely declaration of the Alert classification. The NRC conducted a supplemental inspection at Point Beach during the week of November 18, 2002, that included a further review of the NRC's observations associated with the August 2002 EP drill. During the November 2002 inspection, the former EP Manager provided a "Drill and Exercise Performance - Performance Indicator Form," dated August 23, 2002, to the NRC inspectors. The August 23, 2002, "Drill and Exercise Performance - Performance Indicator Form," documented that the licensee had identified, as a part of its critique of the EP drill, that its declaration of the Alert classification was not timely.

Information developed during the OI investigation indicated that the former EP Manager and the former EP Coordinator, prepared the "Drill and Exercise Performance - Performance Indicator Form," on November 15, 2002, not on August 23, 2002, and provided the document to the NRC inspectors on or about November 20, 2002.

The "Drill and Exercise Performance - Performance Indicator Form" was originally dated August 2, 2002, and signed by both the former EP Manager and the former EP Coordinator. Information on that form indicated that the reactor condition was recognized by the licensee staff at 0807 hours on August 1, 2002, and that the Alert classification was declared at 0812 hours with an elapsed time of 5 minutes. The word, "None," was entered under the "Comments" section on the form. The former EP Manager and EP Coordinator subsequently changed data on the form, and they initialed and dated the changes as being made on August 23, 2002. The changes made to the form were: (1) the reactor condition was identified at 0745 hours on August 1, 2002; (2) the elapsed time for the event notification was 27 minutes, and (3) comments were entered as, "upon further review the time at which the > 600 mR/Hr (millirem per hours) was reached on the simulator was 0745 not 0807, therefore the classification time exceeded the 15-minute expectation" (sic).

The changes the individuals made to the "Drill and Exercise Performance - Performance Indicator Form" indicate that the licensee identified the performance deficiency associated with the untimely declaration of the Alert classification as a part of its critique for the August EP drill. The inaccurate information was provided to the NRC on or about November 20, 2002. The information was material to the NRC as information about the identification of a potential finding is considered by the NRC while processing the issue under the SDP. Therefore, this is considered an apparent violation of 10 CFR 50.9, "Completeness and Accuracy of Information." Based on the information developed during the investigation, OI concluded the former EP Manager and former EP Coordinator deliberately provided materially inaccurate information to NRC inspectors on a "Drill and Exercise Performance - Performance Indicator Form," in an attempt to influence the NRC concerning the identification of the failure to make a timely Alert determination on August 2, 2002.