

December 16, 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: FINAL SIGNIFICANCE DETERMINATION FOR A WHITE FINDING AND NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$60,000 (NRC INSPECTION REPORT NO. 050-002662005-017(DRS); 050-00301/2005-017(DRS) AND NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-038) POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2

Dear Mr. Koehl:

The purpose of this letter is to provide you the final results of our significance determination of the preliminary White finding; our assessment of an apparent violation of 10 CFR 50.47, "Emergency Plans," associated with the preliminary White finding; and our assessment of an apparent violation of 10 CFR 50.9, "Completeness and Accuracy of Information," identified in the subject inspection report. The inspection finding was assessed using the Significance Determination Process (SDP) and was preliminarily characterized as White, (i.e. a finding with low to moderate increased importance to safety). This preliminary White finding and the apparent violation of 10 CFR 50.47 involved the licensee's failure to self-identify the untimely declaration of an Alert classification during an August 2002 emergency preparedness (EP) drill. The apparent violation of 10 CFR 50.9 involved inaccurate information provided to the NRC associated with a critique of the August 2002 EP drill.

In a November 7, 2005, telephone conversation with Mr. Patrick Loudon of the NRC, Region III, you indicated that Nuclear Management Company (NMC) did not wish to discuss these issues at a combined Regulatory Conference and Preliminary Enforcement Conference. Instead, you indicated that NMC would provide a written response to the preliminary significance determination of the finding and the apparent violations. On November 30, 2005, you provided a written response to the preliminary significance determination of the finding and the apparent violations. In that response, NMC agreed that the finding was properly characterized as a White finding, and that the failures to self-identify the untimely declaration of an Alert classification during an August 2002 EP drill and to provide the NRC with complete and accurate information were violations of NRC requirements. Your letter also described the corrective actions implemented by NMC for the White finding and the apparent violations.

After considering the information developed during the inspections and the information provided in your letter dated November 30, 2005, the NRC has concluded that the inspection finding is appropriately characterized as White, an issue with low to moderate increase in importance to safety.

You have 30 calendar days from the date of this letter to appeal the staff's determination of the significance for the identified White finding. Such appeals will be considered to have merit only if they meet the criteria given in NRC Inspection Manual Chapter 0609, Attachment 2.

The NRC also determined that the failure to self-identify the untimely declaration of an Alert classification during an August 2002 EP drill is a violation of 10 CFR 50.47(b)(14), as cited in the enclosed Notice of Violation (Notice). The circumstances surrounding the violation are described in detail in the subject inspection report, dated October 27, 2005 (EA-05-192). In accordance with the NRC Enforcement Policy, the Notice of Violation is considered escalated enforcement action because it is associated with a White finding.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response to Violation B of the Notice. Because plant performance for this issue has been determined to be in the regulatory response band, we will consider the NRC Action Matrix, and determine the most appropriate NRC response for this event. We will notify you, by separate correspondence, of that determination.

Based upon the information developed during an NRC Office of Investigations (OI) investigation, and information provided in NMC letters to the NRC dated May 16, 2003, and November 30, 2005, the NRC also determined that a deliberate violation of 10 CFR 50.9 occurred. This violation is also cited in the enclosed Notice and the circumstances surrounding the violation are described in detail in the OI report, a summary of which is attached.

In summary, on or about November 20, 2002, the licensee provided the Commission with information that was not complete and accurate in all material respects, concerning the results of post-drill critiques of an August 1, 2002 EP drill. Specifically, during an NRC inspection, the former Point Beach EP Manager provided NRC inspectors with a "Drill and Exercise Performance - Performance Indicator Evaluation Form", which indicated that the licensee had self-identified an untimely declaration of an Alert classification during the post-drill critique. In fact, the licensee had not identified the drill weakness during the August 2002 critique. The original document was dated August 2, 2002, and stated that the licensee had declared the Alert classification 5 minutes after plant parameters reached the Emergency Action Level, and within the 15 minute limit. However, on or about November 15, 2002, the former EP Manager and former EP Coordinator altered the document to indicate that the Alert classification was made after the 15 minute limit had been exceeded. The EP Manager and former EP Coordinator also backdated the document to August 23, 2002, in order to give the appearance that the licensee, and not the NRC, had identified the drill weakness. Information on the "Drill and Exercise Performance - Performance Indicator Evaluation Form" is material to the NRC as it is used to determine whether weaknesses during an EP drill are identified, evaluated and corrected. The actions of the former EP Manager and former EP Coordinator, both licensee officials, resulted in the submission of materially inaccurate information to both NMC and the NRC, a violation of 10 CFR 50.9. The violation is categorized in accordance with the NRC Enforcement Policy at Severity Level III (EA-05-191). Additionally, the actions of the former EP Manager and former EP Coordinator were deliberate and violated 10 CFR 50.5, "Deliberate Misconduct."

The NRC provided the OI investigation report to the United States Attorney, Eastern District of Wisconsin, in Green Bay, Wisconsin, on March 11, 2003, for prosecutorial review. On June 23, 2005, the former EP Manager appeared in United States District Court, Eastern District of Wisconsin, Green Bay, Wisconsin, where he entered a plea of guilty to knowingly making and delivering a false writing to the NRC. The former EP Manager was convicted of a misdemeanor and was sentenced to one year of probation and was required to pay a monetary penalty and refrain from involvement in any NRC-licensed activities, as a condition of his probation. Criminal charges were not brought against the former EP Coordinator.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 was considered for the Severity Level III violation of 10 CFR 50.9 occurring on November 20, 2002 (EA-05-191). Because this was a deliberate violation, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy." Credit was not warranted for the *Identification* factor because the violation was identified by the NRC. Credit was warranted for the *Corrective Action* factor for corrective measures that included taking disciplinary actions and counseling the site's leadership team and the entire site organization of the importance of accurate and truthful oral and written communications.

Therefore, to emphasize the importance of accurate and complete information and of prompt identification 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 in the base amount of \$60,000 for the Severity Level III violation (EA-05-191).

The NRC has concluded that information regarding the reason for Violation A of the enclosed Notice (EA-05-191), the corrective actions taken and planned to correct Violation A and to prevent recurrence is already adequately addressed on the docket in a letter from the licensee dated November 30, 2005. Therefore, you are not required to respond to the provisions of 10 CFR 2.201 relative to Violation A unless the description therein does not accurately reflect your corrective actions or your position. If you choose to provide an "Answer to the Civil Penalty" pursuant to 10 CFR 2.205, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

Please contact Kenneth Riemer, Chief, Plant Support Branch, if you have any questions. Mr. Riemer can be reached at telephone number (630) 829-9757.

If you disagree with the enforcement sanction associated with EA-05-191, you may request alternative dispute resolution with the NRC in an attempt to resolve this issue. Alternative 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. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and 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. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through the use of alternate dispute resolution.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, 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 Nos. 50-266; 50-301
 License Nos. DPR-24; DPR-27

- Enclosures: 1. Summary of Office of Investigations Report No. 3-2002-038
 2. Notice of Violation and Proposed Imposition of Civil Penalty
 3. NUREG/BR-0254 Payment Methods (Licensee only)
 4. NUREG/BR-0317 Alternate Dispute Resolution

cc w/Enclosure 1:
 F. Kuester, President and Chief
 Executive Officer, We Generation
 M. Sellman, 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
 Chairperson
 Public Service Commission of Wisconsin
 J. Kitsembel, Electric Division
 Public Service Commission of Wisconsin
 State Liaison Officer

*See previous concurrence

FILE NAME: G:\C:\MyFiles\Roger\ML053530049.wpd

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OFFICE	RIII	RIII	OE ¹	OGC ²	RIII
NAME	Pederson*	O'Brien	Nolan	Longo	Caldwell
DATE	12/15/05	12/16/05	12/13/05	12/12/05	12/16/05

OFFICIAL RECORD COPY

D. Koehl

DISTRIBUTION:

¹ Concurrence received from Doug Starkey for Chris Nolan, OE, on 12/13/05.

²Concurrence received from Jenny Longo, OGC, on 12/12/05.

SECY
OCA
L. Reyes, EDO
W. Kane, DEDR
M. Johnson, OE
C. Nolan, OE
M. Burrell, OE
R. Fretz, OE
N. Hilton, OE
D. Starkey, OE
J. Caldwell, RIII
G. Grant, RIII
L. Chandler, OGC
B. Jones, OGC
J. Dyer, NRR
R. Zimmerman, Director, NSIR
M. Case, Director, DIRS, NRR
R. Gibbs, Chief, IRIB, NRR
M. Tschiltz, Deputy Director, DRA, NRR
D. Merzke, NRR
H. Chernoff, NRR
D. Holody, Enforcement Coordinator, RI
C. Evans, Enforcement Coordinator, RII
K. O'Brien, Enforcement Coordinator, RIII
K. Fuller, Enforcement Coordinator, RIV
F. Bonnett, Enforcement Coordinator, NRR
R. Barnes, Enforcement Contact, NSIR
G. Longo, OGC
M. Cheok, RES
Resident Inspector
E. Brenner, OPA
H. Bell, OIG
G. Caputo, OI
J. Schlueter, OSTP
D. Dandois, OCFO/DAF/LFARB
R. Paul, RIII:OI
S. Kryk, RIII:OI
N. Hane, RIII:OI
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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.

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Nuclear Management Company, LLC
Point Beach Nuclear Plant
Units 1 and 2

Docket Nos. 50-266; 50-301
License Nos. DPR-24; DPR-27
EA-05-191; EA-05-192

During NRC inspections conducted from August 1, 2002 to September 16, 2005, and an NRC investigation completed on February 18, 2003, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, 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 violations and associated civil penalty are set forth below:

A. Violation Assessed a Civil Penalty

10 CFR 50.9, requires, in part, that information provided to the Commission and required to be maintained by a licensee shall be complete and accurate in all material respects.

Contrary to the above, on or about November 20, 2002, the licensee maintained and provided the Commission with information that was not complete and accurate in all material respects, concerning the results of post-drill critiques of an August 1, 2002, emergency preparedness (EP) drill. Specifically, during an NRC inspection, the former Point Beach EP Manager provided NRC inspectors with a "Drill and Exercise Performance - Performance Indicator Evaluation Form", which indicated that the licensee had self-identified an untimely declaration of an Alert classification during the post-drill critique. In fact, the licensee had not identified the drill weakness during the August 2002 critique. The original document was dated August 2, 2002, and stated that the licensee had declared the Alert classification 5 minutes after plant parameters reached the Emergency Action Level, and within the 15 minute limit. However, on or about November 15, 2002, the former EP Manager and former EP Coordinator altered the document to indicate that the Alert classification had been made after the 15 minute limit had been exceeded. The EP Manager and former EP Coordinator also backdated the document to August 23, 2002, in order to give the appearance that the licensee, and not the NRC, had identified the drill weakness. Information on the "Drill and Exercise Performance - Performance Indicator Evaluation Form" is material to the NRC as it is used to determine whether weaknesses during an EP drill are identified, evaluated and corrected.

This is a Severity Level III violation (Supplements VII and VIII).
Civil Penalty - \$60,000. (EA-05-191)

B. Violation Not Assessed a Civil Penalty

10 CFR 50.54(q) requires, in part, that a licensee authorized to possess and operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b).

10 CFR 50.47(b)(4) provides, in part, that a standard emergency classification and action level scheme is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by the facility licensee for determinations of minimum initial offsite response measures.

Point Beach Nuclear Plant Emergency Plan Implementing Procedure (EPIP) 1.1, "Course of Actions," Revision 41, July 26, 2002, implements 10 CFR 50.54(q) and 10 CFR 50.47(b). Section 5, Note 5, of EPIP 1.1 provides, in part, that emergency classifications are to be made consistent with the goal of 15 minutes once plant parameters reach an Emergency Action Level (EAL).

10 CFR Part 50, Appendix E, Criterion IV.F.2.g provides, in part, all training, including exercises, shall provide for formal critiques in order to identify weak or deficient areas that need correction. Any weaknesses or deficiencies that are identified shall be corrected.

10 CFR 50.47(b)(14) provides, in part, that periodic exercises are conducted to evaluate major portions of emergency response capabilities, periodic drills are conducted to develop and maintain key skills, and deficiencies identified as a result of exercises or drills are corrected.

Contrary to the above, on August 1, 2002, during a periodic EP drill, the licensee failed to classify the Emergency Action Level, an Alert, a standard emergency classification, within 15 minutes of reaching plant parameters for an Alert and failed to ensure this deficiency was identified in a formal critique of the drill. Specifically, the licensee did not make the Emergency Action Level classification until approximately 27 minutes after plant parameters for an Alert were met, a period in excess of 15 minutes, and the licensee failed to identify this deficiency during its subsequent critique of the drill.

This violation is associated with a White Significance Determination Process finding. (EA-05-192)

The NRC has concluded that information regarding the reason for Violation A, the corrective actions taken and planned to correct Violation A and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in letters from the licensee dated May 16, 2003, and November 30, 2005. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to

Imposition of Civil Penalty

respond, clearly mark your response as a "Reply to a Notice of Violation, EA-05-191," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator and Enforcement Officer, Region III, and the NRC Resident Inspector at the Point Beach Nuclear Plant, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Pursuant to the provisions of 10 CFR 2.201, Nuclear Management Company (licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission for Violation B, within 30 days of the date of the Notice of Violation and Proposed Imposition of Civil Penalty. This reply should be clearly marked as a "Reply to a Notice of Violation; EA-05-192," and should include for the violation: (1) admission or denial of the Violation B; (2) the reasons for Violation B, 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.

The licensee may pay the civil penalty proposed above for Violation A, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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 the time specified, 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, EA-05-191," and may: (1) deny the violation 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 234(c) of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Michael R. Johnson, 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 and the Enforcement Officer, U.S. Nuclear Regulatory Commission, Region III and a copy to the NRC Resident Inspector at the Point Beach Nuclear Plant.

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. The NRC's document system is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. 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 16TH day of December 2005