

December 16, 2005

IA-05-060

William Yarosz
[Home Address Deleted
Under 10 CFR 2.390(a)]

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-038

Dear Mr. Yarosz:

This letter refers to an investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) to determine whether on November 2002 you deliberately provided inaccurate information to NRC and the Nuclear Management Company (NMC) concerning an August 1, 2002, emergency preparedness (EP) drill at the Point Beach Nuclear Plant (Point Beach).

Based on the OI investigation, NRC has concluded that you deliberately provided inaccurate information to NMC and NRC in violation of 10 CFR 50.5, "Deliberate Misconduct" (Summary enclosed). In summary, on November 20, 2002, you 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, you and the former EP Coordinator altered the document to indicate that the Alert classification had been made after the 15 minute limit had been exceeded. You and the 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. Your actions placed NMC in violation of 10 CFR 50.9, "Completeness and Accuracy of Information."

The NRC provided the OI report to the U.S. Attorney's Office, Eastern District of Wisconsin, Green Bay, Wisconsin. On June 23, 2005, you appeared in the U.S. District Court, Eastern District of Wisconsin, and entered a plea of guilty to knowingly making and delivering a writing to the NRC that contained false statements, a misdemeanor. One of the items listed in the terms of your probation was, "defendant shall refrain from any involvement in NRC-licensed activities."

Based on the OI investigation and your criminal conviction in Federal court, the NRC has concluded that you violated the NRC's rules prohibiting deliberate misconduct at a nuclear power facility. Specifically, 10 CFR 50.5(a)(2), "Deliberate Misconduct," prohibits any employee of an NRC licensee (NMC) from deliberately submitting to the NRC or an NRC licensee information that the person knows to be incomplete or inaccurate in some respect material to the NRC. Information in 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. Copies of 10 CFR 50.5, 10 CFR 50.9, and our correspondence with NMC are enclosed for your information.

The NRC staff considered issuing a significant enforcement action to you. However, the NRC recognizes that NMC terminated your employment, that you were convicted in Federal court, and that the terms of your probation prohibit you from engaging in NRC-licensed activities. Therefore, the NRC is not proposing any enforcement action involving you and considers this matter closed.

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

You are not required to respond to this letter unless the description therein does not accurately reflect your position. Should you choose to respond, clearly mark the response as a "Reply to IA 05-060," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator and the Enforcement Officer, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois 60532-4352, within 30 days of the date of this letter.

In accordance with 10 CFR 2.390 of the NRC "Rules of Practice," a copy of this letter, its enclosures, and your response, if you choose to submit one, will be made publicly available, with personal privacy information removed, either 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>. Therefore, to the extent possible, the response should not include any personal privacy information so that it can be made available to the public without redaction. In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

Enclosures:

1. 10 CFR 50.5 and 10 CFR 50.9
2. NRC Letter to Nuclear Management Company, dated October 27, 2005
3. Nuclear Management Letter to the NRC, dated November 30, 2005
4. NRC Letter to Nuclear Management Company, dated December 16, 2005
5. Summary of OI Investigation No. 3-2002-038

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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

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

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

10 CFR § 50.5 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

[63 FR 1897, Jan. 13, 1998]

Sec. 50.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

[52 FR 49372, Dec. 31, 1987]

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.