

March 9, 2006

EA-06-047

Mr. Gary Van Middlesworth
Site Vice-President
Duane Arnold Energy Center
3277 DAEC Road
Palo, IA 52324

SUBJECT: DUANE ARNOLD ENERGY CENTER - NRC OFFICE OF INVESTIGATIONS
REPORT NO. 3-2004-033

Dear Mr. Van Middlesworth:

This refers to information, provided by members of your staff at the Duane Arnold Energy Center (DAEC) to the U.S. Nuclear Regulatory Commission (NRC) on November 9, 2004, which indicated that a refueling floor supervisor moved irradiated fuel bundles in the spent fuel pool without following procedural requirements. Specifically, your staff indicated that on November 9, 2004, a refueling floor supervisor violated a procedure, required by DAEC Technical Specifications, when the supervisor moved irradiated fuel without completing the refueling procedure required "Pre Fuel Move Checklist."

The NRC Office of Investigations (OI) conducted an investigation into the circumstances surrounding the matter and based upon the results of this investigation an apparent violation was identified and is being considered for escalated enforcement action in accordance with the Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov, select **What We Do, Enforcement**, then **Enforcement Policy**. Specifically, the OI investigation results indicated that a refueling floor supervisor: 1) was responsible for a recent revision to a refueling procedure; 2) provided training to other DAEC employees regarding the procedure revisions; 3) was aware that the refueling procedure require him to complete a "Pre Fuel Move Checklist" before moving irradiated fuel; and 4) willfully violated the refueling procedure when he moved irradiated fuel without preparing the required "Pre Fuel Move Checklist." A summary of the OI report is enclosed.

Since you identified the apparent violation concerning the refueling supervisor's willful failure to follow the refueling procedure and based on our understanding of your corrective actions, a civil penalty may not be warranted in accordance with Section VI.C.2 of the Enforcement Policy. The final decision will be based on your confirming on the license docket that the corrective actions previously described to the NRC staff have been or are being taken. In addition, it may not be necessary to conduct a predecisional enforcement conference in order for the NRC to make an enforcement decision.

However, before the NRC makes its enforcement decision, we are providing you an opportunity to either: 1) respond to the apparent violation described in the enclosed summary of OI Report No. 3-2004-033 within 30 days of the date of this letter; or 2) request a predecisional enforcement conference. If a predecisional enforcement conference is held, it will be closed for public observation. Please contact Bruce L. Burgess, Chief, Reactor Projects Branch 2 at (630) 829-9629 within 7 days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violation in Office of Investigations Report No. 3-2004-033; EA-06-047" and should include for each apparent violation: 1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; 2) the corrective steps that have been taken and the results achieved; 3) the corrective steps that will be taken to avoid further violations; and 4) 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 response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

Since the NRC has not made a final determination regarding the apparent violation of the refueling procedure on November 9, 2004, no Notice of Violation is being issued for this investigative finding at this time. In addition, please be advised that the number and characterization of this apparent violation may change as a result of further NRC review.

Instead of a predecisional enforcement conference for the apparent violation of the refueling procedure on November 9, 2004, you may request alternative dispute resolution (ADR) 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 ADR.

In addition to the apparent willful violation on November 9, 2004, the NRC staff also identified a minor violation of NRC requirements during the review of OI Report No. 3-2004-033. In summary, on November 9, 2004, a health physics technician (HPT) provided the supervisor with Revision 11, dated October 20, 2004, instead of the current revision, No. 12, dated November 9, 2004, of Radiation Work Permit (RWP) No. 187, "New Fuel Receipt and Inspection." Although this issue constitutes a violation of minor significance that is not subject to enforcement action in accordance with Section IV of the Enforcement Policy, it should be corrected consistent with the requirements of your corrective action program.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (if you choose to respond) 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>. 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 by Steven West Acting for/

Mark A. Satorius, Director
Division of Reactor Projects

Docket No. 50-331
License No. DPR-49

Enclosures:

1. Summary of OI Report 3-2004-033
2. NUREG/BR-0317

cc w/encl 1: J. Stall, Senior Vice President, Nuclear and Chief Nuclear Officer
R. Helfrich, Senior Attorney
M. Ross, Managing Attorney
W. Webster, Vice President, Nuclear Operations
M. Warner, Vice President, Nuclear Operations Support
R. Kundalkar, Vice President, Nuclear Engineering
J. Bjorseth, Site Director
D. Curtland, Plant Manager
S. Catron, Manager, Regulatory Affairs
Chairman, Linn County Board of Supervisors
D. McGhee, Iowa Department of Public Health

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¹ Concurrence limited to approving release of Summary of OI Report No. 3-2004-033.

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REPORT NO. 3-2004-033

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SUMMARY
OFFICE OF INVESTIGATIONS
REPORT NO. 3-2004-033

Office of Investigations (OI) Report No. 3-2004-033 involves a refueling floor supervisor at the Duane Arnold Energy Center (DAEC) who repositioned three irradiated fuel bundles in the DAEC spent fuel pool on November 9, 2004, without completing a "Pre Fuel Move Checklist."

On June 16, 2004, DAEC Refueling Procedure No. 403, "Performance of Fuel Handling Activities," Revision No. 16, was issued. Section 5.2 of this procedure provided, in part, that the designated fuel handling supervisor will complete applicable sections of the "Pre Fuel Checklist" before starting fuel handling activities. The refueling floor supervisor was primarily responsible for preparing Revision No. 16 to Refueling Procedure No. 403 and he provided training on the revised procedure to other DAEC employees. The refueling floor supervisor was the designated fuel handling supervisor on November 9, 2004, and failed to complete the "Pre Fuel Move Checklist," as required by Refueling Procedure No. 403, before moving three irradiated fuel bundles in the DAEC spent fuel pool.

Based on the information developed during the OI investigation, it appears that the refueling floor supervisor had sufficient understanding of the procedural requirement to complete applicable sections of the "Pre Fuel Move Checklist" before starting fuel handling activities on November 9, 2004. Also, the refueling floor supervisor was experienced in refueling floor activities and was appropriately trained for the movement of irradiated fuel in the spent fuel pool.

As a result, OI concluded that the refueling floor supervisor willfully (with careless disregard) violated DAEC Procedure No. 403, a procedure required by DAEC Technical Specification 5.4.1, by moving irradiated fuel bundles in the spent fuel pool without first completing the "Pre Fuel Move Checklist."

Enclosure