

**From:** Robert Krsek *RK*  
**To:** Patrick Loudon  
**Date:** Mon, Jun 20, 2005 3:13 PM  
**Subject:** Re: voice mail

yes

>>> Patrick Loudon 06/20/05 03:11PM >>>  
got your message

the security people may look into it further from an FFD standpoint, but I also need your review since you guys are the most familiar with the site policy.


i will incorporate your comments when i discuss this with security. (we may be able to guide them)

CC-46

**From:** Patrick Loudon *RL*  
**To:** Robert Krsek  
**Date:** Tue, Jun 21, 2005 12:37 PM  
**Subject:** FFD allegation 2005-0042

Any insights you can provide, based on your review of the licensee's response, go ahead and send to Terry Madedo.

I am in the process of transitioning the lead over to them.

  
**From:** Robert Krsek  
**To:** Patrick Loudon  
**Date:** Tue, Jun 21, 2005 12:39 PM  
**Subject:** Re: FFD allegation 2005-0042

roger wilco

>>> Patrick Loudon 06/21/05 12:37PM >>>

Any insights you can provide, based on your review of the licensee's response, go ahead and send to Terry Madedo.

I am in the process of transitioning the lead over to them.

**From:** Robert Krsek *RM*  
**To:** Terry Madeda  
**Date:** Tue, Jun 21, 2005 2:12 PM  
**Subject:** Re: FFD allegation 2005-0042

Terry,

Pat asked me yesterday to take a look at this issue as I took the original allegation. I understand that you have the action to go tback to EICS with a recommendation. Attached are some insights I would offer to you after reading the licensee's response. My overall suggestion in the end though was to consult Garmon West or David Desaulniers who wrote the RIs and see if this policy, or in NMC's case a lack of policy for implementing a WE Energies policy onsite, meets the threshold they discussed in the RIS.

Any questions please call,

rob

>>> Patrick Loudon 06/21/05 12:37PM >>>

Any insights you can provide, based on your review of the licensee's response, go ahead and send to Terry Madeda.

I am in the process of transitioning the lead over to them.

**CC:** Patrick Loudon

Date: June 21, 2005

From: Robert G. Krsek, Senior Resident Inspector, Point Beach Nuclear Plant

Subject: Branch 5 DRP Input to Consider When Reviewing Allegation NO. RIII-05-A-0042(Point Beach)

The licensee ultimately concluded the concerns were not substantiated. However, the concern was "an individual is concerned the licensee's policy on counting absences conflicts with the NRC guidance for declaration of Fitness for Duty Concerns. The individual believes the new policy will prevent workers from voluntarily claiming fitness for duty concerns due to the potential retribution for the absence."

The licensee stated the WE attendance Policy does not conflict with 10 CFR 50.7 or the NRC position described in RIS 2002-07. In fact, the last paragraph of the licensee's submittal states this and states:1) the policy directs management to identify, monitor, and counsel employees with documented absenteeism problems and only requires review if the rate is >3%; 2) the potential for discipline is based upon the total worker absence time and not a single event; 3) the policy notes that not all absences count in determining the 3% rate and specifically identifies Family and Medical Leave approved absences as not counting towards the 3% rate.

The licensee further purports on page 4 of 8 that although the issue raised is apparently similar to Concern 3 of RIS 2002-07, the licensee points out that the RIS 2002-07 example refers to numbers of absences while the WE policy looks at number of hours per work year. Therefore the WE policy is different because: 1) the policy is more generous; 2) the policy tracks hours, not instances of absenteeism; 3) the policy is a policy of the asset owner not the licensee.

Several concerns are raised with respect to the licensee's response. The licensee acknowledges that the policy excludes certain types of absences and mentions Family and Medical Leave; however, based on this why doesn't NMC's policy for implementing the WE Energies policy for WE employees onsite (which includes Licensed Reactor Operators and Auxiliary Operators) also specifically exclude self declarations of Fitness for Duty, in the same manner Family and Medical Leave is excluded. In addition, on page 4 the licensee asserts the WE policy is different than Concern 3 of RIS 2002-007 because the policy tracks the number of hours and not the instances and absenteeism. Although the licensee also states this is the asset owner's policy and not NMC's, the response does not even highlight what the programmatic policy/guidance that NMC has provided to its supervisors who manage and rate the performance of the WE energy employees who work for them and are subject to this policy.

Under Request 1 on page 5 of 8, the licensee highlights four 'programmatic elements' which ensure the WE Attendance Policy does not have an adverse impact on individual workers making proper decisions for self-declaring FFD. The licensee merely quotes generic guidance which does not appear to address this issue and does not identify a policy for NMC managers to utilize when implementing the WE Energies Policy on WE Energies employees under their supervision. In addition, the licensee states the NMC supervisor has 'discretionary powers' as to the appropriate action addressing absenteeism of a WE Energies employee.

The licensee then states on Page 6 of 8 that there is no licensee guidance that specifically addresses the implementation of the WE policy with respect to ensuring that implementation is consistent with the guidance in RIS 2002-007 amongst the NMC supervisors overseeing WE

Energies employees.

It would appear that the WE policy, as written, combined with the lack of specific guidance, policies or practices for NMC supervisors overseeing WE employees could be perceived by WE energy employees at the site, though not necessarily in violation of Part 26, as causing the potential to discourage employees from making FFD declarations, especially in light of the fact that the policy specifies excludes certain types of leave, as is stated for Family and Medical Leave.

The licensee did document a substantial absenteeism rate on page 7 of 8 at the site; however, because the licensee does not have a specific policy for NMC supervisors overseeing WE Energies employees which discusses self-declarations of FFD, in addition to the Family and Medical Leave exclusions contained in the WE Policy could be perceived as preventing workers from voluntarily claiming FFD concerns due to the potential for retribution for the absence and could be seen as partially substantiating the overall concern.

It may be worthwhile discussing this issue with the NRC Technical Contacts listed on RIS 2002-007 to understand what exactly was the intent of the section of the RIS on page 3, entitled "Sanctions Against Workers Unfit for Duty Because of Fatigue and Employer Policies and Practices for Limiting Personnel Use of Leave." This would ensure a consistent Agency message from the NRC to the licensee.