



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 19, 2003

EA-03-105
IA-03-024

MEMORANDUM TO: Frank J. Congel, Director, Office of Enforcement
FROM: *James L. Caldwell*
James L. Caldwell, Regional Administrator
SUBJECT: PROPOSED ENFORCEMENT ACTION FOR FITNESS FOR DUTY
ISSUE AT KEWAUNEE NUCLEAR PLANT
(OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-004)

Attached for your review and concurrence is a draft enforcement package (proposing a Severity Level III violation and a \$60,000 civil penalty) to Nuclear Management Company for a willful violation, representing careless disregard, of the fitness for duty program at the Kewaunee Nuclear Plant. Also attached is a closeout letter to the individual responsible for the violation.

Attachments: As stated

cc w/attachments: D. Dambly, OGC
J. Luehman, OE
J. Dixon-Herrity, OE
G. Longo, OGC
R. Franovich, NRR

CONTACT: Charles H. Weil, EICS
(630) 810-4372

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~~PROPOSED ENFORCEMENT ACTION, NOT FOR RELEASE WITHOUT
THE APPROVAL OF THE DIRECTOR, OFFICE OF ENFORCEMENT~~

November 19, 2003

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Attached for your review and concurrence is a draft enforcement package (proposing a Severity Level III violation and a \$60,000 civil penalty) to Nuclear Management Company for a willful violation, representing careless disregard, of the fitness for duty program at the Kewaunee Nuclear Plant. Also attached is a closeout letter to the individual responsible for the violation.

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FILE NAME: G:\EICS\03-105 SLIII & CP - IA-03-024.wpd

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NAME	Weil		Benson		Reynolds SAN	Pederson		Clayton *		Caldwell	
DATE	10/21/03		10/21/03		10/31/03	10/3/03		10/2/03		10/1/03	

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* Clayton via phone
JK Weil 11/05/03

**PROPOSED ENFORCEMENT ACTION, NOT FOR RELEASE WITHOUT
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EA-03-105

Mr. Thomas Coutu
Site Vice President
Kewaunee Nuclear Plant
Nuclear Management Company, LLC
N490 Hwy 42
Kewaunee, WI 54216-9511

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$60,000 (NRC OFFICE OF INVESTIGATIONS REPORTS NO. 3-2002-004)**

Dear Coutu:

This refers to information received by the U.S. Nuclear Regulatory Commission (NRC) on November 8, 2001, concerning the alleged failure to properly implement the NRC required fitness for duty (FFD) program at the Nuclear Management Corporation's (NMC) Kewaunee Nuclear Plant. The issue was investigated by NMC and the NRC Office of Investigations (OI) and an apparent violation of the Kewaunee FFD program by a supervisor employed by Day and Zimmerman Nuclear Power System (D&Z), a contractor at the Kewaunee Nuclear Plant, was identified. A summary of the OI report was provided to NMC on June 9, 2003, and a predecisional enforcement conference (PEC) was held with NMC on July 16, 2003. A PEC was held on August 5, 2003, with the D&Z supervisor.

Based on information developed during the NMC and OI investigations, information you provided during the July 16, 2003, PEC and in your August 29, 2003, letter, and information provided by the D&Z supervisor at the PEC on August 5, 2003, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding the violation are described in the July 16 and August 19, 2003, letters. During the approximate time period of July/August 2001, two D&Z employees told a D&Z supervisor that they refused to work with a third D&Z employee because they believed the other employee was "a drunk." Within the same time period, and after receiving the information that the other D&Z employee was believed to be "a drunk," the supervisor detected an odor that may have been alcohol on that employee. The D&Z supervisor stated he received FFD training as a part of general employee training for unescorted access to the Kewaunee Nuclear Plant and he believed that he was required to observe the employee for signs of impairment. The supervisor stated that he did observe the employee and did not detect any sign of impairment; therefore, he did not initiate any other requirement of the FFD program. Representatives of NMC at the PEC on July 16, 2003, indicated that the supervisor was required to order a for-cause FFD test of the D&Z employee after the supervisor detected the possible odor of alcohol on the employee. In

**PROPOSED ENFORCEMENT ACTION, NOT FOR RELEASE WITHOUT
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view of the supervisor's training, having been informed that the employee had an alleged alcohol consumption problem, and detecting the possible odor of alcohol on the employee, the supervisor's failure to have the D&Z employee submit to a for-cause FFD test is considered a willful violation, representing careless disregard, of the FFD program at the Kewaunee Nuclear Plant. Therefore, the violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for a Severity Level III violation. Because this was a willful violation, the NRC considered whether credit was warranted for *Identification and Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy." While the NRC recognizes that NMC performed several investigations to resolve the matter; nevertheless, an allegation to the NRC, and not independent action by NMC, initiated the investigative activity that identified the violation. Therefore, credit is not warranted for the *Identification* civil penalty adjustment factor. The NRC determined that credit was warranted for the *Corrective Action* civil penalty adjustment factor. Corrective actions consisted of, but were not limited to: (1) coaching and counseling the D&Z supervisor; (2) reminding all employees of the appropriate actions if an employee is suspected of being unfit for duty; (3) modifying FFD procedures; and (4) improving employee FFD training.

Therefore, to emphasize the importance of prompt identification of violations and the need to maintain the work environment at a nuclear power plant that is free from the effects of drugs and alcohol, 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 (Notice) in the base amount of \$60,000 for the Severity Level III violation.

As described in our letter of June 9, 2003, a potential violation of 10 CFR 50.9, "Completeness and Accuracy of Information," associated with the FFD issue, was originally considered for enforcement action. Subsequent to that letter NMC interviewed several witnesses and presented the results of the interviews at the PEC on July 16, 2003. Following, the PEC, NMC conducted additional interviews and submitted the results to the NRC with your August 29, 2003, letter. The results of these interviews indicated that several witnesses furnished significantly different information to NMC than that provided in their earlier interviews with OI. As a result, the facts of the matter could not be conclusively determined because of the changed information, and the NRC staff has decided not to pursue enforcement action for this matter.

Our June 9, 2003, letter also discussed alleged employment discrimination at NMC's Palm Beach Nuclear Plant that may have related to the FFD issue at the Kewaunee Nuclear Plant. From the information obtained by OI during that investigation (OI Report No. 3-2002-020) it could not be concluded that employment discrimination occurred. A copy of the OI report synopsis was enclosed with that letter. Also in that letter, we requested that NMC address any potential "chilling effect" that may have resulted from that FFD issue. From the information you presented at the PEC on July 16, 2003, it does not appear that a "chilling effect" occurred and we have no further questions in that regard.

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You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure 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>. Should you choose to respond, your response, to the extent possible, should not include any personal privacy, proprietary, or safeguards information so that the response can be made available to the Public without redaction. 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,

James L. Caldwell
Regional Administrator

Docket No. 50-305; 50-266; 50-301
License No. DPR-43; DPR-24; DPR-27

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/encl: D. Graham, Director, Bureau of Field Operations
Chairman, Wisconsin Public Service Commission
State Liaison Officer
A. J. Cayia, Site Vice President
Point Beach Nuclear Plant
President and Chief
Operating Officer, WEPCo
J. Cowan, Executive Vice President
Chief Nuclear Officer
Licensing Manager
D. Weaver, Nuclear Asset Manager
G. Arent, Manager, Regulatory Affairs
J. Rogoff, Esquire General Counsel
J. O'Neill, Jr., Shaw, Pittman,
Potts & Trowbridge
K. Duveneck, Town Chairman
Town of Two Creeks
A. Bie, Chairperson, Wisconsin
Public Service Commission

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S. Jenkins, Electric Division
Wisconsin Public Service Commission

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JDyer, NRR

RZimmerman, NSIR

DDambly, OGC

HBell, OIG

GCaputo, OI

OPA

GGrant, RIII

CPederson, RIII

SReynolds, RIII

RCaniano, RIII

PHiland, RIII

JCreed, RIII

PLouden, RIII

TVegel, RIII

CWeil, RIII

TMadedda, RIII

JDixon-Herrity, OE

GLongo, OGC

RFranovich, NRR

Enforcement Coordinators

RI, RII, and RIV

OE:ES

OE:EA (2)

OE:MAH

OE:WEB

RAO:RIII

OAC:RIII

SRI, Kewaunee

SRI, Point Beach

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C. Ariano (hard copy)

DRP III

DRS III

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**PROPOSED ENFORCEMENT ACTION, NOT FOR RELEASE WITHOUT
THE APPROVAL OF THE DIRECTOR, OFFICE OF ENFORCEMENT**

**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

Nuclear Management Company, LLC
Kewaunee Nuclear Plant

Docket No. 50-305
License No. DPR-43
EA-03-105

During an NRC investigation concluded on November 29, 2002, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, 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 violation and associated civil penalty are set forth below:

10 CFR 26.20 requires, in part, that each license subject to 10 CFR Part 26 establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of 10 CFR Part 26, including policies to address the abuse of legal drugs (e.g. alcohol).

10 CFR 26.24(a) requires, in part, that the licensee implement chemical testing programs for persons subject to 10 CFR Part 26 to provide a means to deter and detect substance abuse, including testing for cause here, as soon as possible after receiving credible information that an individual is abusing alcohol.

Kewaunee Nuclear Power Plant, Nuclear Administrative Directive (NAD) 01.04, "Fitness for Duty Program," Revision C, November 16, 1999, implements the requirements of 10 CFR Part 26 with the goal of maintaining a work environment that is free from the effects of drug and alcohol abuse. Section 2.1 of NAD 01-04 provides, in part, that NAD 01.04 applies to all persons who have applied for or who have been granted unescorted access to the Kewaunee Nuclear Power Plant.

Section 7 of NAD 01.04 lists the procedures that have been established to implement the Kewaunee Nuclear Power Plant Fitness for Duty Program. General Nuclear Procedure (GNP) 1.4.4, "Behavioral Observed Just Cause Testing," is one of the implementing procedures described in Section 7 of NAD 01.04.

Section 2.0 of GNP 1.4.4, Revision A, April 18, 1995, provides, in part, that the procedure applies to all persons granted unescorted access to the Kewaunee Nuclear Power Plant.

Section 5 of GNP 1.4.4 provides, in part, that the licensee is committed to a program of continued observation of employees, contractors, and vendors for indication of any on-the-job behavior which may impair job performance. When such behavior is detected, corrective measures shall be taken, including an investigation of the circumstances and an evaluation of the risk involved in continuing unescorted access to the Kewaunee Nuclear Power Plant.

**PROPOSED ENFORCEMENT ACTION, NOT FOR RELEASE WITHOUT
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Contrary to the above, during July and August 2001 a supervisor for Day and Zimmerman Nuclear Power Systems (D&Z), a contractor at the Kewaunee Nuclear Plant, failed to take corrective measures after receiving credible information about on-the-job behavior which may impair the performance of a D&Z employee. Specifically, two (D&Z) employees told the supervisor that they refused to work with another employee because the other employee was "a drunk." The supervisor subsequently detected the possible odor of alcohol on the D&Z employee, who was reported as "a drunk," and the employee had unescorted access to the protected area of the Kewaunee Nuclear Plant. After detecting the possible odor of alcohol on the D&Z employee, the supervisor failed to initiate an investigation of the circumstances and failed to perform an evaluation of the risk in continuing to allow the individual unescorted access to the protected area of the Kewaunee Nuclear Power Plant.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$60,000

Pursuant to the provisions of 10 CFR 2.201, Nuclear Management Company, LLC (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation, EA-03-105" and should include for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation 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. 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 to 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. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above 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" 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.B.2 of the Enforcement Policy should be addressed. Any written answer in accordance with

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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 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Frank J. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 1555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, and a copy to the NRC Resident Inspector at the Kewaunee Nuclear Plant

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR 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 2.790(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.

Dated this 11th day of November 2003

**PROPOSED ENFORCEMENT ACTION, NOT FOR RELEASE WITHOUT
THE APPROVAL OF THE DIRECTOR, OFFICE OF ENFORCEMENT**

IA-03-024

[Redacted]
[Home Address Deleted
Under 10 CFR 2.790(a)]

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-004

Dear [Redacted]

This refers to an investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) into an apparent violation of the NRC required fitness for duty (FFD) program at the Kewaunee Nuclear Plant. The Nuclear Management Company (NMC), the operator of the Kewaunee Nuclear Plant, also investigated this matter. A summary of the OI investigation was provided to you on June 19, 2003, and a predecisional enforcement conference (PEC) was held with you on August 5, 2003.

Based on information developed by the NMC and OI investigations, information provided by NMC during a PEC on July 16, 2003, information contained in an August 29, 2003, letter from NMC, and information you provided during the August 5, 2003, PEC, the NRC has concluded that a violation of NRC requirements occurred. In summary, during the approximate time period of July/August 2001, at least two D&Z employees told you that they refused to work with another D&Z employee because they believed that employee was "a drunk." Within the same time period and after receiving the information that the D&Z employee was "a drunk," you detected an odor which could have been alcohol on that employee. You told the NRC staff that after detecting the odor on the employee, you watched the employee and did not make any observation to indicate that the employee could not perform his assigned responsibilities. Therefore, you did not initiate any actions under the FFD program (e.g. having the employee submit to FFD testing). You also told the NRC staff that you received FFD training during general training for unrestricted access to the Kewaunee Nuclear Plant. At the PEC on July 16, 2003, representatives of NMC indicated that you were required to order a for-cause FFD test of the D&Z employee after you detected the possible odor of alcohol on the employee. In view of your training, your prior knowledge that the employee had an alleged alcohol consumption problem, and after you detected the possible odor of alcohol on the employee, your failure to have the D&Z employee submit to a for-cause FFD test is considered a willful violation, representing careless disregard, of the FFD program at the Kewaunee Nuclear Plant. Since this was not considered a deliberate violation and after consultation with the Director, Office of Enforcement, the NRC has decided not to take enforcement action against you in this case. Notwithstanding this decision, the NRC determined that your actions caused NMC to be

**PROPOSED ENFORCEMENT ACTION, NOT FOR RELEASE WITHOUT
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in violation of the NRC approved FFD program at the Kewaunee Nuclear Plant. Enclosed is a copy of the Notice of Violation issued to NMC.

As described in our letter of June 10, 2003, a potential violation of 10 CFR 50.9, "Completeness and Accuracy of Information," associated with the FFD issue, was originally considered for enforcement action. Subsequent to that letter, NMC interviewed several witnesses and presented the results of the interviews at the PEC with NMC on July 16, 2003. Following that PEC, NMC conducted additional interviews and submitted the results to the NRC on August 20, 2003. The results of these interviews indicated that several witnesses furnished significantly different information to NMC than that provided in their earlier interviews with OI. As a result, the facts of the matter could not be conclusively determined because of the changed information, and the NRC staff has decided not to pursue enforcement action for this matter.

Please feel free to contact James R. Creed, Security Team Leader, NRC Region III office, if you have any questions. Mr. Creed can be reached at telephone number (630) 829-9500.

You are not required to respond to this letter. However, if you choose to provide a response, please mark it as "Response to IA-03-024" and provide it to the Regional Administrator, with a copy to the Enforcement Officer, U. S. Nuclear Regulatory Commission Region III, 801 Warrenville Road, Lisle, IL 60532-4351 within 30 days of the date of this letter. If you choose to respond, your response should not include any personal privacy, proprietary, or safeguards information. 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 2.790(b) to support a request for withholding confidential commercial or financial information).

Normally documents compiled for enforcement purposes are placed in the NRC Public Electronic Reading Room link at <http://www.nrc.gov/reading-rm/ADAMS.html>. Since the NRC is not taking enforcement action against you in this case, a copy of this letter, or a copy of your response if you choose to reply, will not be placed in the electronic reading link. However, all final NRC documents, including the final NRC report, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA), subject to a redaction of information in accordance with the FOIA.

Sincerely,

Cynthia D. Pederson, Director
Division of Reactor Safety

**PROPOSED ENFORCEMENT ACTION, NOT FOR RELEASE WITHOUT
THE APPROVAL OF THE DIRECTOR, OFFICE OF ENFORCEMENT**

Docket No. 50-305
License No. DPR-43

Enclosure: Letter to NMC with Notice of Violation
and Proposed Imposition of Civil Penalty - \$60,000

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