



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

June 10, 2003

IA-03-024

[REDACTED]

ex BC

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

Dear [REDACTED] ex BC

This letter refers to an investigation conducted by the U. S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) into your apparent deliberate failure to follow Fitness-For-Duty (FFD) requirements at the Kewaunee Nuclear Plant and deliberately providing incomplete and/or inaccurate information during investigations into the FFD issue by Nuclear Management Company (NMC) and OI. A summary of the OI investigation is attached to the enclosed letter sent to NMC (Enclosure 1).

Based on the results of the OI investigation, it also appears that you may have violated the NRC regulation prohibiting deliberate misconduct, 10 CFR 50.5 (Enclosure 2) by causing NMC to be in apparent violation of NRC FFD requirements and for providing incomplete and inaccurate information to NMC and the NRC. This apparent violation of 10 CFR 50.5 is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 (Enclosure 3).

In summary, during July 2001, you deliberately failed to report and take action after receiving information from several contractor employees that they smelled an odor of alcohol on a contract foreman. While the foreman apparently had access to the protected area of the plant, he was working in the contractor's fabrication shop, located in the owner controlled area outside of the protected area of the Kewaunee Nuclear Plant, when the FFD information was reported to you. Information from the OI investigation also disclosed that you deliberately provided incomplete and inaccurate information, to both a licensee investigator and to OI, about the FFD concern involving the foreman. The information was material to the NRC because both the licensee and OI were investigating alleged violations of the FFD regulation at the Kewaunee Nuclear Plant.

However, before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond in writing to the apparent violation, as noted above, within 30 days of the date of this letter; or (2) request a predecisional enforcement conference. If a conference is held, it will be conducted in the NRC Region III Office, transcribed, and closed to public observation. Please contact James R. Creed, Chief, Safeguards Program Manager, at telephone number (630) 829-9857 within 7 days of the date of this letter to notify the NRC of your intended response.

Information in this record was deleted  
in accordance with the Freedom of Information  
Act, exemptions 7C  
FOIA- 2006-113

D-20

If you choose to respond in writing, your written response, should be submitted to the NRC within 30 days of the date of this letter and clearly marked as a "Response to Apparent Violations, IA-03-024" Your written response should be addressed to the Regional Administrator and the Enforcement Officer at NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351 at the same time a copy should be sent to the U. S. Nuclear Regulatory Commission Director, Office of Enforcement, Washington, D. C. 20555-0001. The written response should include: (1) the reason for the apparent violations, 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. In presenting your corrective action, you should be aware that the promptness and comprehensiveness of your corrective measures will be considered by the NRC. Your response should be submitted under oath or affirmation and may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If you decide not to attend a conference or provide a written response within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

You are also asked to specifically address the factors the NRC normally considers in determining whether enforcement action should be taken against an individual. The are described in Section VIII, "Enforcement Actions Involving Individuals," of the NRC Enforcement Policy" (see Enclosure 3).

Please be advised that the number and characterization of the apparent violations may change as a result of further NRC review. If the NRC concludes that you engaged in deliberate misconduct, the possible sanctions available to the NRC include issuing to you a Notice of Violation, a civil monetary penalty,<sup>1</sup> or an order. If the NRC issues an order to you, the order may prohibit your future involvement in NRC-licensed activities. Following receipt of your written response or the predecisional enforcement conference, you will be advised by separate correspondence of the results of our deliberations in this matter.

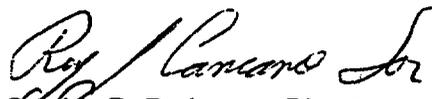
Your written response or attendance at a predecisional enforcement conference is your opportunity to explain why the NRC should be confident in the future, while engaged in nuclear activities, you will abide by the NRC's regulations. If you desire to have a predecisional enforcement conference, you should be aware that the conference will be transcribed and the cost of your transportation to the NRC Region III office is your responsibility. You may have an attorney or personal representative accompany you at the predecisional enforcement conference or assist you in preparing your written response. You are also responsible for any costs associated with such representation or assistance in preparing your response or for attending the conference.

---

<sup>1</sup> Although the NRC can issue a civil penalty to an individual, a civil penalty is not normally imposed on unlicensed individuals.

Normally documents compiled for enforcement purposes are placed in the NRC Public Electronic Reading Room link (PERR) at <http://www.nrc.gov/reading-rm/adams/html>. The NRC will delay deciding whether to place a copy of this letter and your written response, if you choose to respond in writing (with personal privacy information removed, e.g., your home address) into the PERR until a final enforcement decision has been reached. At that time in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," copies of all documents may be placed in the PERR. All final NRC documents, including the final OI investigation report, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA).

Sincerely,

  
Cynthia D. Pederson, Director  
Division of Reactor Safety

Docket No. 050-305  
License No. DPR-24

**PORTIONS OF ENCLOSURES ARE EXEMPT FROM PUBLIC DISCLOSURE**

- Enclosures: 1. 6/9/03 Letter to Nuclear Management Company  
2. 10 CFR 50.5; "Deliberate Misconduct"  
3. NRC Enforcement Policy

**BY EXPRESS DELIVERY**

Sec. 50.5 Deliberate misconduct.

(a) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder'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, certificate of registration holder, 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, certificate of registration holder, an applicant, or a licensee's, certificate holder'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, certificate of registration holder 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, certificate of registration holder, applicant, contractor, or subcontractor.

[63 FR 1896, Jan. 13, 1998]