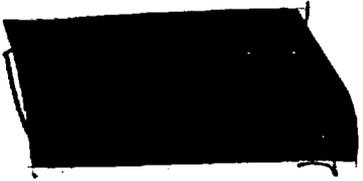




UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

April 23, 2004



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SUBJECT: ALLEGATION NO. RIII-02-A-0114

Dear [REDACTED]

This is in reference to our letter dated December 19, 2003, that stated we continued to review your concerns which related to activities at the Kewaunee Nuclear Power Plant. You were concerned that: (1) several individuals were unjustly accused that they failed to report the smell of alcohol on an individual; [REDACTED] (3) a supervisor lied to a licensee investigator about being told about the smell of alcohol on an individual; (4) you were the subject of discrimination when you were not rehired after providing information to the licensee's investigator about the smell of alcohol on an individual; and (5) action taken against the employees who raised the fitness-for-duty concerns has created a chilled environment for raising safety concerns. We provided you with our resolution of Concern 2 in our letter to you dated June 2, 2003.

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We have completed our review of your other concerns (Concerns 1, 3, 4, and 5). The details of our investigation are included in the enclosure to this letter. Based upon investigations completed by Nuclear Management Company (NMC) and the NRC RIII Office of Investigations (OI), we substantiated that individuals brought to their supervisor's attention a potential fitness for duty issue, and the supervisor did not investigate the matter in accordance with the licensee's fitness for duty program. As noted in the enclosed Notice of Violation and Imposition of Civil Penalty, we identified a violation of 10 CFR 26.20, which requires that the licensee establish and implement written policies and procedures designed to meet the performance objectives and requirements of 10 CFR 26, "Fitness for Duty Programs." The Kewaunee Nuclear Power Plant General Nuclear Procedure 1.4.4, "Behavioral Observation Just Cause Testing," Section 5, provides that the licensee is committed to a program of continued observation of contractors for indication of any of the on-the-job behaviors which may impair job performance. When such behavior is detected, corrective measures, including an investigation of the circumstances and risk associated in continued unescorted access, shall be taken. Contrary to this requirement, the NRC staff concluded that the licensee failed to conduct an investigation of the circumstances or evaluate the risk involved in continued unescorted access of a contractor employee after a supervisor became aware of a potential fitness-for-duty issue. The licensee is required to respond to the enclosed Notice of Violation, including the corrective actions taken in response to the violation.

In addition, based upon an investigation completed by OI and our review of the licensee's evaluation of your concern regarding a potential chilling effect for raising safety concerns, we did not substantiate Concerns 4 and 5. We concluded that there was insufficient information to pursue Concern 3; therefore, we were unable to substantiate the concern.

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information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 7 & 4 outside scope
FOIA- 2006-112

Thank you for informing us of your concerns. We take our safety responsibilities to the public very seriously and appreciate your willingness to bring these issues to our attention. Based on the results of our review, we consider the issues closed.

If you disagree with our conclusions or wish to provide additional information, please contact the Region III Office Allegation Coordinators by writing to the U.S. Nuclear Regulatory Commission, Region III, at 2443 Warrenville Road, Suite 210, Lisle, Illinois 60532-4352, or calling the NRC Region III switchboard toll free at (800) 522-3025 or the NRC Safety Hotline at (800) 695-7403. Your cooperation is appreciated.

Sincerely,


Cynthia D. Pederson, Director
Division of Reactor Safety

Enclosure: Closure information

cc w/enclosure: AMS File No. RIII-2002-A-0114

EXPRESS MAIL

Concern 1:

You are concerned that several other craft employees were being unjustly accused that they failed to report the smell of alcohol on an individual while being employed as craft employees during the steam generator project. You stated that this was reported to the supervisor, who took no action.

NRC Conclusion:

The Nuclear Management Company (NMC) and the NRC RIII Office of Investigations (OI) initiated investigations into whether the supervisor you referenced took no action in response to reports of the smell of alcohol on an individual. The investigations included interviews with pertinent individuals and a review of documentation associated with this issue. Much conflicting information was obtained. However, based upon the information obtained during the investigation, the NRC staff concluded that the supervisor you referenced took no action after receiving or becoming aware of information sufficient to warrant further action under the licensee's fitness-for-duty (FFD) program. Based upon the NRC's enforcement action in response to these findings, we plan no further action and consider this matter closed.



outside
of
scope

Concern 3:

You are concerned that a supervisor lied to a licensee investigator about being told by you and several other employees about the smell of alcohol on an individual.

NRC Conclusion:

The NRC RIII OI investigated this issue. In addition, the licensee's staff interviewed several witnesses in the referenced investigation following our investigation and provided the results of the interviews to the NRC staff. Based upon our review of the information gathered, the NRC staff could not sufficiently determine whether the supervisor provided inaccurate information to the licensee investigator about being told by you and several other employees about the smell of alcohol on an individual. Due to conflicting evidence obtained, we were not able to substantiate that the supervisor lied to a licensee investigator about being told about the smell of alcohol on an individual. We plan no further action and consider this matter closed.

Concern 4:

You are concerned that you were the subject of discrimination by not being rehired after providing information to the licensee's investigator about the smell of alcohol on an individual.

NRC Conclusion:

The NRC RIII OI investigated this issue. The results of the investigation indicated that, after NMC conducted an investigation into the potential FFD issue, the licensee put a hold on your access since it appeared from the information obtained during the NMC investigation that you admitted having observations regarding a co-worker's FFD that you did not report. The NRC staff concluded that it was reasonable and prudent for the licensee to place a hold on your site access based upon the information in its report. In addition, the individual who made the decision to place a hold on your site access had no knowledge that you reported an FFD concern while employed at the Kewaunee Nuclear Power Plant. Finally, during the licensee's interviews with you subsequent to its initial investigation, you provided a number of contradictory statements. Therefore, the licensee's staff determined that you were not eligible for reinstatement of your site access at the licensee's facilities.

Based upon the evidence developed during the NRC investigation, it could not be substantiated that you were discriminated against for raising a FFD concern. Rather, we determined that your site access was placed on hold due to preliminary information gathered during an NMC investigation into a FFD issue which indicated that you may have not reported observations which indicated that an individual was not FFD. In addition, your site access was placed on hold due to contradictory statements that you made during subsequent interviews with the licensee's staff. Therefore, we plan no further action and consider this matter closed.

We have enclosed a copy of the OI report synopsis which provides our conclusions on this matter. Also, we placed a copy of the synopsis in the NRC Public Document Room. This means that the letter will be available from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Final NRC documents, including the final OI report, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information pursuant to the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, "Request for Records." The instructions to file a FOIA are accessible at <http://www.nrc.gov/reading-rm/foia/foia-request.html>.

Concern 5:

You are concerned that the action taken against the employees who raised the FFD concerns has created a chilled environment for raising a safety concern.

Your concern pertained to craft employees who were accused that they failed to report the smell of alcohol on an individual during the steam generator project. Several employees believed that a supervisor took no action after being told about the FFD problem, that a supervisor lied about whether the employees actually reported the FFD concern during a follow-up investigation, and that the craft employees who reported the FFD concern and participated in the licensee's investigation were not rehired.

NRC Conclusion:

The NRC RIII OI explored the possibility that the actions taken against the employees who raised FFD concerns created a chilled environment for raising a safety concern. Based upon the information obtained during the investigation, the NRC staff concluded that none of the individuals interviewed indicated that they were discouraged from reporting FFD concerns by

the contractor, the union, or the licensee while employed at the Kewaunee Nuclear Power Plant. The individuals who were accused of not reporting the referenced FFD issues generally indicated that, despite the results of the licensee's investigation, they would still report a FFD concern.

In addition, we referred this concern to the Nuclear Management Company, which is the licensee for the Kewaunee Nuclear Power Plant. In our referral letter, we specifically requested that the organization or individual conducting the investigation be independent of the issue. Several members of the Region III technical staff reviewed the licensee's investigation report and concluded that the organization conducting the investigation was independent of the concern and the evaluation was adequate.

The licensee's investigators interviewed 12 craft employees (pipe fitters, carpenters, and laborers) employed by the contractor at the time of the investigation who were involved in the steam generator replacement project. The interviews were conducted fully recognizing that some of the individuals may not be the same that worked on the generator project.

The results of the licensee staff's interviews indicated the employees interviewed would raise safety-related issues with their supervisor, and that working and communication activities between workers and supervisors were good. In addition, none of those interviewed, with the exception of one, were aware of anyone who had raised a safety issue and then incurred a negative consequence from doing so. The one exception was an interviewee who recalled that approximately two years ago a worker raised a concern and a co-worker made a negative comment to the individual for bringing up the issue. The interviewee could not recall any additional information regarding the situation. However, the investigators determined that this event had no impact on the interviewee's willingness to raise safety-related issues.

Based upon the above information, we did not substantiate that a chilled environment existed during the generator replacement project or that a chilling environment now exists within the contractor's organization due to the actions taken against individuals who raised FFD concerns and participated in the licensee's investigation of the FFD issue described in Concern 1. Since we did not identify violations of NRC requirements or safety issues, we plan no further action and consider this concern closed.

SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, on August 6, 2002, to determine whether a contract welder employed by Day and Zimmerman Nuclear Power Systems, was discriminated against by the licensee, Nuclear Management Company, LLC (NMC), for raising a fitness-for-duty (FFD) concern while employed at the Kewaunee Nuclear Power Plant (Kewaunee) during an outage in 2001. The contract welder alleged that as a result of raising the FFD concern at Kewaunee, he was prevented from obtaining employment at NMC's Point Beach Nuclear Power Plant (Point Beach) by having his access denied at Point Beach and other NMC plants.

Based upon the evidence developed, the investigation did not substantiate that the contract welder was deliberately discriminated against for raising an FFD concern.