

Licensee: Nuclear Management Company, LLC
 Docket/License No: Docket Nos. 50-266; 50-301 License Nos. DPR-24; DPR-27
 Assigned Division/Branch: DRP/Branch 5

Allegation Review Board Membership: Satorius/ Langan/ Berson/ Heller/ Louden/

Purpose: Initial ARB to discuss the CI concerns and approve the evaluation plan

GENERIC CONCERNS: If Yes Explain: _____

DISCUSSION OF SAFETY SIGNIFICANCE: No immediate threat to public health safety

OI ACCEPTANCE: YES NO (Priority: HIGH NORMAL LOW)

Basis for OI Priority: _____

OI has Accepted Concern(s) No(s). _____ Signature _____

ARB MINUTES PROVIDED TO: Grant/Paul/Louden *Distributed RDS 7/20/05*

ACKNOWLEDGMENT LETTER: PRINT IN FINAL X _____ REVISE _____ N/A _____

REFERRAL LETTER: A. Licensee YES _____ 10 CFR 2.390 _____ NO X
 B. State of YES _____ NO X
 C. DOE YES _____ NO X

date received	June 20, 2005	due date of 1 st ARB	July 20, 2005
due date of ACK Ltr	July 20, 2005	date -90 days old	September 18, 2005
date -120 days old	October 18, 2005	date -150 day old	November 17, 2005
date -180 days old	December 17, 2005	date -365 days old	June 20, 2006
projected date for the 5 yr statue of limitation			June 19, 2010

COMMENTS:

The CI did not object to having identity released.
 The CI did not object to having the concern(s) forwarded to the licensee.

Mark Agost
 Allegation Review Board Chairman

¹⁸
7/17/05
 Date Mark

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(5)

Concern No. 1:

The concerned individual (CI) believes stated that s/he was discriminated against (site access denied) for reporting that s/he inadvertently dropped a wrench from a scaffold. The CI is employed as a carpenter for Day and Zimmerman, MPS, Inc.

Background Information

On March 22, 2005, while a scaffold was being erected, the CI inadvertently dropped a wrench. The CI reported the dropped wrench to the supervisor, a condition report was written, and the CI's access was denied the same day. The CI stated that s/he failed to use a lanyard with the wrench even though use of a lanyard was discussed during a pre-job brief. The CI claimed, and the CAP states, that lanyards were in short supply. The CI also stated that another employee had dropped a piece of diamond plate and site access was not denied.

The CI requested review of his/her access denial on April 20, 2005, and has received no response from the licensee. The CI did not object to having his/her identity released, and did not object to referring the issue(s) to the licensee.

Regulatory Basis:

10 CFR 50.7, Employee Protection, states, in part, that discrimination by a Commission licensee against an employee in engaging in certain protected activities is prohibited. The Branch was not able to determine from the information provided by the CI, whether they felt access was denied because they raised a safety issue (NRC jurisdiction), or whether access was denied for an insignificant mistake (DOL issue).

- I. Action Evaluation: The following method of resolution is recommended (circle):
- A. Send to Licensee Requesting Response in 30 Days. (Describe the general areas we expect the licensee to address.)
 - B. Priority RIII Follow up and Closure Memo to OAC
 - C. Follow up During Routine Inspection Within _____ Days and Closure Memo to OAC
 - D. Discrimination
 - 1. Offer ADR.
 - 2. Reason why ADR should not be offered
 - 3. Priority for the OI investigation if ADR is not used: HIGH/NORMAL/LOWRecommended Basis:
 - E. All other OI referrals. Priority for the OI investigation: HIGH/NORMAL/LOW
Recommended Basis:
 - F. Outside NRC's Jurisdiction. Describe Basis Below.
 - G. Too General for Follow-up. Describe Basis Below.
 - H. Other.

Responsible for Action - OAC

At the July 18, 2005 ARB - Agreed with recommendation - EICS and technical staff call the CI to obtain the information due July 21, 2005

II. Special Considerations/Instructions:

Because the Branch could not determine, from the information provided by the CI, whether the concern of discrimination is within the NRC's jurisdiction, it is recommended that the CI be contacted and questioned. It needs to be determined why s/he felt that they were discriminated against (access denied). Was it because they believed they raised a safety concern (NRC jurisdiction), or was it because they felt access was denied because they made an insignificant mistake (DOL issue)? If the CI believes access was denied because they raised a safety issue, then ADR may be appropriate in cooperation with OI and Regional Counsel. If the CI believes access was denied after making an insignificant mistake, then a closure letter with emphasis on calling DOL would be appropriate.

Questions for Concerned Individuals (CI) Who Allege Discrimination

The following questions are intended to provide sufficient information for the ARB and OI to determine if an OI investigation is warranted. If the answers to these questions are not included in original documentation of a discrimination allegation, an allegation coordinator will attempt to call the CI prior to an ARB to get the information.

The NRC's regulations protect people from discrimination for raising nuclear safety issues.

- What issues did the CI raise?

The concerned individual (CI) believes stated that s/he was discriminated against for reporting that s/he inadvertently dropped a wrench from a scaffold. The CI is employed as a carpenter for Day and Zimmerman, MPS, Inc.

On March 22, 2005, while a scaffold was being erected, the CI inadvertently dropped a wrench. The CI reported the dropped wrench to their supervisor, a condition report was written, and the CI's access was denied the same day. The CI stated that s/he failed to use a lanyard with the wrench even though use of a lanyard was discussed during a pre-job brief. The CI claimed, and the CAP states, that lanyards were in short supply. The CI also stated that another employee had dropped a piece of diamond plate and site access was not denied.

The CI requested review by the licensee of his/her access denial on April 20, 2005, and has received no response from the licensee. The CI did not object to having his/her identity released, and did not object to referring the issue(s) to the licensee.

- When?

Access denied March 22, 2005. CI called Allegations Coordinator June 20, 2005.

- Did the CI inform anyone from management or the NRC of the concern?

The CI requested review by the licensee of his/her access denial and has received no further response. The CI also, as stated above, contacted an NRC Allegations Coordinator with the concern.

- If the CI informed the NRC, was management aware that the CI informed NRC?

Not enough information to determine whether licensee is aware whether CI informed the NRC.

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- What action was taken against the CI? (e.g., fired, laid off, demoted, transferred)
Denied access to the site. The CI is still employed by Day and Zimmerman.
- When was the action taken?
March 22, 2005.
- Why does the CI believe the action taken was a result of your raising these safety issues?
The Branch cannot determine whether the CI believes that s/he was denied access to the site because 1) they raised a safety issue (dropped wrench, inadequate pre-job brief, etc.), which may be discrimination, or 2) because they made a mistake, which may be a DOL issue and outside NRC jurisdiction.

June 21, 2005

MEMORANDUM TO: Allegation File RIII-2005-A-0062

FROM: Paul Pelke, Office Allegation Coordinator, Region III

SUBJECT: RECEIPT OF ALLEGATION (POINT BEACH)

On June 20, 2005, I received a call from a concerned individual (CI) who stated that s/he was discriminated against (access denied to the plant) for reporting that s/he inadvertently dropped a wrench from a scaffold. The CI's name, address, and phone number are listed separately in the allegation file. The CI worked as a carpenter for Day and Zimmerman, MPS, Inc.

On March 22, 2005, while a scaffold was being erected, the CI inadvertently dropped a wrench from the scaffold. The scaffold was being erected on the 26' elevation of the Unit 2 turbine hall near the water box. The wrench fell from the scaffold, through the 26' floor opening, and landed next to the water box on the 8' elevation.

The CI reported the dropped wrench to the supervisor, a condition report was written (CAP 062966), and the CI's access was denied on the same day. CAP 062966 is attached. The CI was informed that s/he failed to use a lanyard with the wrench even though it was discussed during a pre-job brief. The CI claims that lanyards were in short supply (not all tool pouches had them) and that it was not discussed during a pre-job brief. CAP 062966 states under the why did this occur section that, "Lanyards were not readily available and are in short supply." The CI stated that another employee dropped a piece of diamond plate and still worked at Point Beach.

The CI requested a review of his access denial on April 20, 2005, and has received no response from the licensee.

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The CI did not object to having his/her identity released, and did not object to referring issues to the

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licensee.

Attachment: CAP 062966

NEW ALLEGATION: RIII-2005-A-0062

July 14, 2005

MEMORANDUM TO: Patrick L. Loudon, Chief, Branch 5, Division of Reactor Projects

FROM: Paul Pelke, Office Allegation Coordinator, RIII

SUBJECT: **RECEIPT OF NEW ALLEGATION: RIII-05-A-0062 (Point Beach)**

On June 20, 2005, EICS received the attached allegation regarding potential discrimination. The EICS memorandum dated June 22, 2005, requested that the branch review the allegation. Your memorandum dated July 12, 2005, characterized the concerns, provided the regulatory basis, and recommended an evaluation plan. I have reviewed your memorandum and agree with your proposed course of action.

I have scheduled an Allegation Review Board (ARB) on Monday, July 18, 2005. Please review the attached information to prepare for the ARB.

Attachment: As stated

cc w/attachment:

ARB Copy

Richard Paul

Scott Langan

Scott Kryk

Craig Hayden

Nancy Hane

Bruce Berson (hard copy only)

Kenneth O'Brien

Nick. Hilton, OE

RIIIDRP_ADMIN

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