

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: Pederson / Hayden/ Berson/ Heller/ Louden/ Kunowski / Pelke  
*PRP*

Purpose: <sup>2nd</sup> ~~Final~~ 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

ACKNOWLEDGMENT LETTER: PRINT IN FINAL  N/A 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 <sup>st</sup> 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 statute 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.

*C. Pederson*  
 Allegation Review Board Chairman

*8/22/05*  
 Date

SENSITIVE ALLEGATION MATERIAL

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Information in this record was deleted  
 in accordance with the Freedom of Information  
 Act, exemptions 2C, 2.5  
 FOIA- 2006-7-13

(11)  
 (12)  
 D-35

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 but claims use of a lanyard was not 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 in a letter dated July 7, 2005, the licensee reversed the access denial. The CI is still concerned about the interim loss of an estimated [redacted] wages. DOL declined the CI's case but did not explain why. The CI did not object to having his/her identity released, and did not object to referring the issue(s) to the licensee. 7c

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.

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 30 Days conduct a followup arb
- 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/LOW
 Recommended 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 - EICS

II. Special Considerations/Instructions:

At the August 22, 2005 ARB:

1. On August 22, 2005 Paul Pelke talked to the DOL Investigator and was informed that the DOL has not declined or accepted the CI claim of discrimination. The Investigator stated that the CI has not filed a written complaint; th CI has only communicated to the DOL verbally.
2. ~~Resident Inspector to obtain the condition and the licensee investigation. Louden to review the information and re-ARB.~~

of

DRP

Completed  
FR & POW

DUE TO 9/22/05



The ARB on July 18, 2005, recommended that the Concerned Individual (CI) be called to determine whether the concern of discrimination is within the NRC's jurisdiction. EICS subsequently discussed this issue with the CI on two occasions, July 22, and August 18, 2005. The CI reported the dropped wrench in accordance with company policy, to report anything that goes wrong. Dropping anything in the plant always has a nuclear safety potential because the individual dropping it is not the person to evaluate the consequences. A condition report is written and an assessment is made as to whether anything safety-related was damaged, and whether retrieval is possible, etc. The licensee admits in their CR that lanyards were in short supply, and a conscious decision was made not to construct a lanyard. However, constructing your own lanyard is inappropriate because you would not be able to assure it could handle the tool loads, etc. The area below the individual was roped off for personnel safety; therefore, the immediate personnel safety aspects of dropping the wrench were minimized.

### 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 of his/her access denial on April 20, 2005, and in a letter dated July 7, 2005, the licensee reversed the access denial. The CI is still concerned about the interim loss of

**SENSITIVE ALLEGATION INFORMATION**

**AMS NO. RIII-2005-A-0062 7C**

an estimated [redacted] in wages. DOL declined the CI's case but did not explain why. 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. 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.

- What action was taken against the CI? (e.g., fired, laid off, demoted, transferred)

Denied access to the site and an estimated loss of [redacted] in wages. The CI is still employed by Day and Zimmerman. 7C

- 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 CI reported the dropped wrench in accordance with company policy, to report anything that goes wrong.

**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.



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

Attachment: CAP 062966

## FOLLOWUP ALLEGATION REVIEW BOARD: RIII-2005-A-0062

August 18, 2005

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

FROM: Paul Pelke, Office Allegation Coordinator, RIII

SUBJECT: **FOLLOWUP ALLEGATION REVIEW BOARD: RIII-05-A-0062 (Point Beach)**

On June 20, 2005, EICS received the attached allegation regarding potential discrimination. The initial Allegation Review Board (ARB) was held on July 18, 2005. The ARB recommended that the Concerned Individual (CI) be called to determine whether the concern of discrimination is within the NRC's jurisdiction. EICS subsequently discussed this issue with the CI on two occasions, July 22, and August 18, 2005. EICS proposes offering the CI Alternate Dispute Resolution.

**I have scheduled an ARB on Monday, August 22, 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

Mike Kunowski

RIIIDRP\_ADMIN

SENSITIVE ALLEGATION MATERIAL

**From:** Allegations Allegations Region III  
**To:** Allegations Region III, Allegations; Kunowski, Michael; Louden, Patrick  
**Date:** Fri, Jul 22, 2005 11:51 AM  
**Subject:** RIII-2005-A-0062 (Point Beach)

At the July 18, 2005 ARB it was agreed that EICS (pelke) and technical staff (Kunowski) will call the CI to obtain the information due July 21, 2005. Mike and I tried to call the CI and the CI was not home. The CI subsequently called me on 7/22/05. We were to ascertain from the CI whether the CI felt access was denied because they raised a safety issue (NRC jurisdiction), or whether access was denied for an insignificant mistake (DOL issue).

The CI stated that DOL did not accept the CI's concern.

The CI stated that it is the policy to report any issue they identify at the plant.

The access denial letter from the licensee stated that access was denied because the CI failed to secure a tool with a lanyard causing a potential significant safety event.



5/9

**CC:** Berson, Bruce; Heller, James