

3rd arb ACTION PLAN **SENSITIVE ALLEGATION MATERIAL** RIII-05-A-0062 (Point Beach)

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: Shear /Hayden/ Berson/ Heller/ Louden/ Pelke

Purpose: 3rd 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 pDS
8/30/05*

Status LETTER: PRINT IN FINAL xxxx 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.

David L. Shear
 Allegation Review Board Chairman

8/29/05
 Date

SENSITIVE ALLEGATION MATERIAL

Page 1 of 8

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

D-37
20

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 Foreman's statement in the Event Investigation Report states, "Tool was dropped. No lanyard on tool. Having tools on a lanyard was discussed in the pre-job brief to prevent this. We will tie off tools with string until we get lanyards in."

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 wages, out of pocket health insurance paid, and an adjustment for pension. The CI filed a written discrimination complaint with DOL on August 20, 2005.

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 _____ 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 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/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 - _____

II. Special Considerations/Instructions:

A the August 29, 2005 ARB:

1. Louden met with the ECP site manager and reviewed the licensee's investigation. The ECP manager stated that the CI knew he was required to use the lanyards. The ECP manager has intervened the job foeman who stated that use of lanyards was required however none were staged. In addition use of the lanyard was specific to Dan Zimmerman in response to several dropped tool events.
2. The ARB concluded that there was not a nexus between dismissal and reporting the dropped tool. Inform the CI that we will keep the case open pending the results of the dol investigation.

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. **DRP obtain the completed condition report and the licensee's investigation. Louden to review the information and re-ARB.**

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

SENSITIVE ALLEGATION INFORMATION**AMS NO. RIII-2005-A-0062**

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 Foreman's statement in the Event Investigation Report states, "Tool was dropped. No lanyard on tool. Having tools on a lanyard was discussed in the pre-job brief to prevent this. We will tie off tools with string until we get lanyards in."

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.

- 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)

The CI is still concerned about the interim loss of wages, out of pocket health insurance paid, and an adjustment for pension. The CI filed a written discrimination complaint with DOL on August 20, 2005. The CI is still employed by Day and Zimmerman.

A memorandum from Day and Zimmerman to Point Beach dated August 26, 2005, states in regards to your questions concerning any work/safety incidents to date for 2005, based on a discussion with the Day and Zimmerman Site Manager during the time frame, and also a search of Day and Zimmerman records, the only Safety/Work violation would be that of the CI, this occurred on 03/22/05. The action taken was that of the plant to remove access of this employee. There was no disciplinary action taken by Day and Zimmerman in this matter."

- 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

August 26, 2005

SENSITIVE ALLEGATION MATERIAL

MEMORANDUM TO: Region III Office Allegation Coordinator

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

SUBJECT: FOLLOW-UP INFORMATION: ALLEGATION NO. RIII-2005-A-0062 (POINT BEACH)

As a follow-up to the discussions from the ARB held on August 22, 2005, I have completed a follow-up review and gathering of information pertaining to the subject allegation. During the ARB, I was asked to gather information on the original CAP, including any information regarding the licensee's reasons for dismissing the Concerned Individual (CI) and the subsequent reinstatement of his plant access. The following details provide updated information that I was able to gather.

On August 25, 2005, I met with Mr. Gerry Young, the Point Beach Employee Concerns Program Coordinator in the resident inspectors' office. I asked Mr. Young to describe for me his understanding of the events regarding a dropped wrench on March 22, 2005, and any subsequent licensee actions.

Mr. Young stated that he was aware of the event and had performed an investigation into the matter. He stated that in an interview with the CI, the CI acknowledged that he knew he had violated a safety rule but that he felt pressure to complete the work. When asked by Mr. Young, the CI could not describe the nature or origin of the perceived pressure. Because the CI acknowledged that he willfully violated a safety rule, the NMC Project Liaison who oversaw Day and Zimmerman activities requested that the CI be terminated with his access denied until further notice.

Mr. Young then completed an event investigation and report of the incident. The report stated that the use of a lanyard was discussed at a pre-job briefing and that the individual felt time and schedule pressure. The report also documented that the CI made a conscious decision to proceed with the work despite not having a lanyard on the tool. A statement provided by the work foreman on March 22nd indicated that the use of lanyards was discussed at the pre-job briefing. The report also identifies that lanyards were in short supply.

Mr. Young also stated to me that the use of a lanyard for overhead work was only a requirement for Day and Zimmerman crews because of previous work problems. The site plans on expanding this rule to all work groups for the upcoming Unit 1 outage. The use of lanyards is not required by OSHA or any other plant procedures.

Mr. Young then described for me the circumstances surrounding the CI's access being subsequently reinstated. Mr. Young said that he had an interview with the CI during the investigation and determined that the CI was very sincere in his understanding of what inappropriate actions he took. The CI also provided Mr. Young with some assurance that he would be mindful of safety rules in the future. Mr.

SENSITIVE ALLEGATION INFORMATION

AMS NO. RIII-2005-A-0062

Young provided his views on the matter to Dennis Koehl, the Point Beach Site Vice President. Based on his interviews with the CI, Mr Young recommended that the CI be allowed access back into the plant.

I also brought back several documents from the site which I will provide to Paul Pelke to include in the allegation file.

If you have any other questions on this matter, please feel free to call me.

**CONTACT: P. Louden, DRP
630/829-9627**

DOCUMENT NAME: G:\EICS\AMS-LTRS\05 AMS\050062.PointBeach\050062.3rd ARB.wpd

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	RIII						
NAME	PLouden:						
DATE	08/ /05						

OFFICIAL RECORD COPY