

United States  
Nuclear Regulatory Commission



---

# Report of Investigation

POINT BEACH 1

Discrimination Against Contract Welder for Raising  
Fitness-for-Duty Concern

Office of Investigations

Reported by OI:R111

7C

Information in this record was deleted  
in accordance with the Freedom of Information  
Act, exemptions 5, 7, C  
FOIA 2006-112

H-32

Title: POINT BEACH 1

**DISCRIMINATION AGAINST CONTRACT WELDER FOR RAISING FITNESS-  
FOR-DUTY CONCERN**

Licensee:

Nuclear Management Company, LLC  
700 First Street  
Hudson, WI 54016

Docket No.: 50-266

Case No.: 3-2002-020

Report Date: February 28, 2003

Control Office: OI:RIII

Status: CLOSED

Reported by:

*Mary Kay Fahey*

Mary Kay Fahey, Sr. Special Agent  
Office of Investigations  
Field Office, Region III

Reviewed and Approved by:

*Richard C. Paul*

Richard C. Paul, Director  
Office of Investigations  
Field Office, Region III

**WARNING**

**DO NOT DISSEMINATE, PLACE IN THE PUBLIC DOCUMENT ROOM OR  
DISCUSS THE CONTENTS OF THIS REPORT OF INVESTIGATION OUTSIDE  
NRC WITHOUT AUTHORITY OF THE APPROVING OFFICIAL OF THIS  
REPORT. UNAUTHORIZED DISCLOSURE MAY RESULT IN ADVERSE  
ADMINISTRATIVE ACTION AND/OR CRIMINAL PROSECUTION.**

72

## 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.

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

THIS PAGE LEFT BLANK INTENTIONALLY

OFFICE OF INVESTIGATIONS  
FIELD OFFICE

Case No. 3-2002-020

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III~~

TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| SYNOPSIS .....  | 1           |
| LIST OF INTERVIEWEES .....  | 5           |
| DETAILS OF INVESTIGATION .....  | 7           |
| Applicable Regulations .....  | 7           |
| Purpose of Investigation .....  | 7           |
| Background .....  | 7           |
| Interview of [REDACTED] .....   | 8           |
| Coordination with Regional Staff .....  | 9           |
| Coordination with the Regional Counsel .....  | 10          |
| Licensee Investigation .....  | 10          |
| Review of Documentation .....   | 10          |
| Review of the DOL Report .....  | 11          |
| Allegation .....  | 11          |
| Evidence .....  | 11          |
| Protected Activity .....  | 11          |
| Knowledge of Protected Activity .....   | 12          |
| Unfavorable Action Taken Against [REDACTED] .....   | 14          |
| Did the Unfavorable Action Resulted from [REDACTED] Engaging in Protected<br>Activity ..... | 14          |
| Agent's Analysis .....  | 16          |
| Conclusion .....  | 17          |
| LIST OF EXHIBITS .....  | 19          |

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

THIS PAGE LEFT BLANK INTENTIONALLY

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III~~

Case No. 3-2002-020

LIST OF INTERVIEWEES

Exhibit

[REDACTED] Welder, Day and Zimmerman Nuclear Power Systems (DZNPS) ..... 10

CLEVELAND, Randall D., Access Manager, Nuclear Management Company ..... 16, 17

[REDACTED] Welder, DZNPS ..... 11

[REDACTED], Mechanical and Civil Superintendent, DZNPS ..... 12, 15

[REDACTED] Welder, DZNPS ..... 2, 8

[REDACTED] Project Superintendent, DZNPS ..... 13

[REDACTED], Night Superintendent, DZNPS ..... 14

7c

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III~~

**THIS PAGE LEFT BLANK INTENTIONALLY**

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

## DETAILS OF INVESTIGATION

### Applicable Regulations

10 CFR 50.5 Deliberate Misconduct (2001)  
10 CFR 50.7 Employee Protection (2001)

### Purpose of Investigation

This investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region III (RIII), on August 6, 2002, to determine whether [REDACTED] a contract welder employed by Day and Zimmerman Nuclear Power Systems (DZNPS), 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. [REDACTED] 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.

### Background

On March 25, 2002, OI initiated an investigation (3-2002-004) into allegations of deliberate failure by contract welders to follow FFD regulations. The allegations stemmed from information provided by NMC that contract welders, working for DZNPS at Kewaunee during the fall 2001 outage, had concerns about the smell of alcohol on [REDACTED] In Service Inspection General Foreman, DZNPS, but failed to report their concerns.

On July 2, 2002, [REDACTED] one of the aforementioned welders identified by the licensee, contacted RIII, and alleged that not only did he report the FFD concern to his supervisor, [REDACTED] but as a result of reporting [REDACTED] had his access denied at Point Beach and all NMC nuclear power plants. [REDACTED] stated that he felt this was retaliation for raising the FFD concern regarding [REDACTED]

At an Allegation Review Board (ARB) conducted on August 5, 2002, RIII requested OI determine whether [REDACTED] was discriminated against by the licensee for raising an FFD concern in violation of 10 CFR 50.7, Employee Protection, and 10 CFR 50.5, Deliberate Misconduct (Exhibit 1).

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

7C

Interview of [REDACTED]

On August 5, 2002, [REDACTED] was interviewed concerning his allegation of discrimination. [REDACTED] stated that he was employed as a contract welder for DZNPS at Kewaunee during the 2001 outage until November 2001. [REDACTED] stated that following the outage, he worked at Point Beach for approximately three weeks as a welder for DZNPS. [REDACTED] acknowledged that upon leaving Kewaunee, he had no problem obtaining employment at Point Beach. [REDACTED] stated that he, "Walked right in." [REDACTED] acknowledged that he quit his job at Point Beach, "... mainly because of safety issues, had problems up in the cable spreading room." (Exhibit 2, pp. 2-6 and 42-43).

[REDACTED] stated that in approximately February 2002, he learned that his access had been denied by NMC at both Point Beach and Kewaunee. [REDACTED] explained that following his employment at Point Beach, he worked in New Hampshire at a non-nuclear facility. [REDACTED] recalled that while still in New Hampshire, he contacted Phillips Getschow, a contractor at Point Beach, to inquire about work for an impending outage. [REDACTED] learned from Phillips Getschow that he might have a problem with site access at Point Beach and he should contact his union's business agent. [REDACTED] contacted Local 400 Business Agent Pat McPHAIL in an attempt to determine the problem (Exhibit 2, pp. 6-9 and 43-46).

Agent's Note: [REDACTED] was represented during his OI interview by Business Agent McPHAIL, of Local 400, United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry. McPHAIL stated that on February 11, 2002, Local 400 had submitted several names, including [REDACTED] to Phillips Getschow, for employment at Point Beach, and was informed there would be a problem with [REDACTED] (Exhibit 2, pp. 43-46).

[REDACTED] stated that he contacted Darlene PETERS, Kewaunee Security Administrative Supervisor, whom he identified as the "head of security" at Point Beach and asked about his site access. According to [REDACTED], PETERS told him that because of an investigation in which [REDACTED] name had come up, [REDACTED] had been put on "red flag." When [REDACTED] asked what that meant, PETERS told him that information would be gathered in the next few weeks. "She said, 'Oh, it shouldn't take long. A couple weeks you should be all right.'" [REDACTED] recalled that PETERS did not tell him the reason for the investigation (Exhibit 2, pp. 9-10 and 44-45).

[REDACTED] stated that he was red flagged for eight months and finally got an official denial of employment on June 28, 2002. [REDACTED] told OI that he was denied access because, "Background information has developed adversely reflecting trustworthiness and reliability." (Exhibit 2, pp. 9-10 and 45; Exhibit 3)

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

7C

Agent's Note: The June 28, 2002, letter from NMC to [REDACTED] stated that, "You [REDACTED] provided the following contradictory information to NMC investigators regarding a random drug and alcohol collection you were required to complete at Kewaunee," and "You [REDACTED] provided the following contradictory information to NMC investigators regarding the fitness of a worker at Kewaunee" (Exhibit 3, p. 3).

[REDACTED] explained why he felt he could not obtain employment at any NMC plant. He stated that, "I definitely know things that went on out there that are not legal. I know that they've got supervisors that have lied. I know they've done illegal practices in welding and they know I know it." [REDACTED] acknowledged that it was a combination of raising an FFD concern and welding concerns. [REDACTED] stated that he felt that DZNPS was partially responsible for the discrimination. "One of the main ones (sic) behind or I feel is responsible is NPS [DZNPS]." According to [REDACTED] during the time period in which [REDACTED]'s access was denied, DZNPS was a contractor at both Kewaunee and Point Beach. [REDACTED] also acknowledged that he had not pursued employment at any other nuclear plants once he learned his access had been denied by NMC (Exhibit 2, pp. 49-50 and 56).

Agent's Notes: The welding concerns that [REDACTED] referred to were addressed as Concerns 1 and 3 of Allegation Management System (AMS) RIII-2001-A-0176 and were closed out by the RIII staff. They were not concerns that were referred to OI.

[REDACTED] explained that while DZNPS could not prevent Phillips Getschow from hiring him, DZNPS could, "... make it definitely hard on my access right now by falsifying records as far as telling somebody about [REDACTED] (sic) [REDACTED]. Flat out we told [REDACTED] [REDACTED] lied to the NRC investigator, NMC investigators, and because of that our access was denied" (Exhibit 2, p. 51).

[REDACTED] stated that he was not aware of either NMC or the union discouraging anyone from reporting FFD concerns and [REDACTED] denied that there was an unspoken rule to not report a co-worker. [REDACTED] stated, "The nukes got different guidelines. You don't mess around with those. We know that. You just don't." [REDACTED] acknowledged that when he reported an FFD concern involving [REDACTED] he honestly felt that [REDACTED] was not fit for duty (Exhibit 2, pp. 52-54).

#### Coordination with Regional Staff

On August 5, 2002, an ARB requested that OI initiate an investigation to determine whether [REDACTED] had been deliberately discriminated against in violation of 10 CFR 50.5 and 50.7 (Exhibit 4).

NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III

7C

Coordination with the Regional Counsel

5 This investigation was initiated with the concurrence of NRC:RIII Counsel Bruce A. BERSON, [REDACTED]

Licensee Investigation

7C On or about November 8, 2001, RIII staff informed NMC that five allegations had been received by the NRC concerning problems with DZNPS at Kewaunee and Point Beach. By letter dated November 19, 2001, the NRC requested that NMC evaluate 3 of the 5 concerns with a response requested within 30 days. Concerns 1 and 3 involved welding issues and Concern 2 involved an FFD concern (Exhibit 5).

After receiving the letter from the NRC, NMC made arrangements for the issues to be addressed by an independent investigator. The results were provided to the NRC by letter dated February 8, 2002. Concern 1, stated that DZNPS hides welding issues such as welding without paperwork and is lying about weld tests, was not substantiated by NMC. Concern 2 stated that "... DZNPS supervisors who turn their heads when certain individuals come in 'half-blitzed.'" NMC substantiated that the odor of alcohol was detected without appropriate actions taken. Concern 3 stated that unqualified welders were employed by DZNPS at Kewaunee. NMC's investigation partially substantiated this concern (Exhibit 6, pp. 2-11).

Agent's Note: Concerns 1 and 3 were closed out in the AMS based upon the licensee's investigation. Concern 2 was referred to OI and resulted in an investigation, OI Case No. 3-2002-004, which did not substantiate that the contract welders failed to report FFD concerns, but did substantiate that the Mechanical and Civil Superintendent deliberately failed to report an FFD concern. The investigation also substantiated that the Mechanical and Civil Superintendent deliberately provided false information to both OI and the licensee's investigator relative to being informed about the FFD concern. The investigation did not substantiate that the Foreman failed to self-report and submit to FFD testing (Exhibit 7).

Review of Documentation

7C Reports of Telephone Interview [REDACTED] dated January 11-12, 2002, from Walker Investigative Consultants, Inc. (WIC), Report No. W-009-01 NMC/ECP No. 01-18, Supplemental Report, dated January 30, 2002, prepared by the licensee's investigator. According to the reports [REDACTED] told the investigator that [REDACTED] a DZNPS General Foreman, "... routinely, and strongly," smelled of alcohol. [REDACTED] stated that he had been randomly selected on two occasions to be FFD tested while at Kewaunee, and it was [REDACTED] who

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

was sent to retrieve [redacted] from work and escort [redacted] to the testing area. [redacted] claimed that on the second occasion, he made comments to the nurse conducting the examination about [redacted] condition. [redacted] stated that he and coworker [redacted] had attempted to report [redacted] to both [redacted] and another supervisor, [redacted], but were ignored and told not to worry about it (Exhibit 8, p. 4).

Personnel Access Data System (PADS) Security Report for [redacted] dated September 17, 2002, indicating a negative entry on January 14, 2002 (Exhibit 9, p. 2).

### Review of the U.S. Department of Labor (DOL) Report

At the time of [redacted]'s interview with OI on August 5, 2002, he had not filed a complaint with DOL (Exhibit 2, pp. 54-55).

Allegation: Discrimination Against Contract Welder for Raising FFD Concern

### Evidence

The testimony provided during interviews was reviewed regarding the allegation involved in this investigation. In addition, various documents related to the allegation, which are listed in the Review of Documents section of this report, were also reviewed. Copies of the interviews and documents obtained by OI:R/III are attached as exhibits to this report.

#### 1. Protected Activity

[redacted] acknowledged that during the 2001 outage at Kewaunee, he raised an FFD concern about [redacted]. "Because he smelled of alcohol," [redacted] recalled that he reported the concern in July during the pre-outage period. [redacted] stated that he and [redacted], another DZNPS welder, confronted their supervisor, [redacted], and I confronted [redacted] and then flat out told him I'm not working for that man. I'm not working around that guy." [redacted] stated that [redacted] "blew it off . . . We told him and he just kind of said - - just blew it off. He didn't really say much about anything." [redacted] recalled that he and [redacted] were standing outside the shack and [redacted] confronted [redacted] first. [redacted] kind of looked at me, kind of shrugged his shoulders and to be honest his reply I cannot remember word for word. To paraphrase, it was basically like it didn't matter, who cares, something on that end." [redacted] acknowledged that he did not raise the FFD concern to anyone else (Exhibit 2, pp. 13-19).

[redacted] confirmed that he and [redacted] had a conversation with [redacted] about [redacted] FFD. [redacted] could not identify the exact date, but recalled that it was during

NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III

7C

their pre-outage work, and was near the end of July 2001. He recalled that the conversation with [REDACTED] took place in the pre-fabrication shop and [REDACTED] was also present. [REDACTED] could not recall [REDACTED]'s exact response, but [REDACTED] indicated that [REDACTED] should not worry about it, that [REDACTED] would take care of the situation. [REDACTED] acknowledged that once the concern had been raised, "that was the end of it as far as I was concerned there was nothing else ever said about it" (Exhibit 10, pp. 7-14 and 21).

[REDACTED] another contract welder for DZNPS during the 2001 Kewaunee outage, stated that he also reported an FFD concern about [REDACTED] between June and November 2001. [REDACTED] recalled that he later learned that [REDACTED] and [REDACTED] had reported the same concern. "We had both done it on the same day. They done it prior to myself, because I had - [REDACTED] was coming through the maintenance shop, and that's when I had stopped [REDACTED] and told him about [REDACTED] smelling of alcohol." [REDACTED] stated that [REDACTED] told him that he would look into the matter (Exhibit 11, pp. 7-11).

## 2. Knowledge of Protected Activity

[REDACTED] was the Mechanical and Civil Superintendent for DZNPS at Kewaunee from approximately the end of April 2001, until the end of December 2001. [REDACTED] denied that anyone raised FFD concerns to him about [REDACTED] (Exhibit 12, pp. 4 and 23).

Agent's Note: [REDACTED] was the first-line supervisor for DZNPS.

[REDACTED] acknowledged that he was contacted by an investigator hired by NMC in December 2001, and first learned about an FFD concern when asked questions about [REDACTED]'s FFD. "It was when [REDACTED] didn't work for us anymore and after I had talked to Hal Walker [investigator] and I was told that there was an issue. Otherwise, I knew of no problem." [REDACTED] stated that after he had been contacted by the investigator, he had mentioned to DZNPS management that there was an FFD issue concerning [REDACTED] (Exhibit 12, pp. 23-24).

[REDACTED] was the Project Superintendent for DZNPS at Kewaunee during the 2001 outage, and was [REDACTED]'s supervisor. [REDACTED] acknowledged that neither [REDACTED] nor [REDACTED] approached him about any FFD concern while they were employed at Kewaunee, nor did [REDACTED] ever tell him that FFD concerns had been raised about [REDACTED]. [REDACTED] denied that [REDACTED] told him that some of the welders refused to work for [REDACTED] (Exhibit 13, pp. 4, 20, and 49-51).

[REDACTED] told OI that he had a conversation with [REDACTED] in approximately March 2002, after [REDACTED] had been contacted by the investigator hired by NMC in 2002. During that conversation,

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

7C

[redacted] admitted to [redacted] that [redacted] and [redacted] had spoken to him [redacted] about [redacted] FFD (Exhibit 13, pp. 25-26).

[redacted] was the night supervisor for DZNPS at Kewaunee during the 2001 outage, and was employed from July 16, through December 4, 2001. According to [redacted] he and [redacted] reported to [redacted] Exhibit 14, pp. 5-6).

[redacted] stated that he became aware of an FFD concern involving [redacted] in approximately August 2001. [redacted] came into the office, and he said, [redacted] and [redacted] . . . they ain't going to work for a fucking drunk like [redacted] . . . And I remember as plain as day 'cause I'm not saying that [redacted] a little angel, but they brought it to the right person because if they felt the foreman [redacted] was under the influence, they're supposed to come to the next one in charge, and that was - - at that time was [redacted] and he was the GF [General Foreman]. [redacted] explained to OI that he had not heard the conversation between [redacted] and [redacted] but heard [redacted] make the comments in general when [redacted] came into their office. [redacted] recalled that [redacted] was also present in the room when the comment was made. [redacted] recalled asking [redacted] what he was going to do about the matter, and believed that [redacted] may have said, "You'd better go take care of this." [redacted] stated that he was not aware of the FFD concern being elevated to DZNPS management (Exhibit 14, pp. 10-17 and 24-25).

In light of the evidence developed that [redacted] had, in fact, been informed about an FFD concern involving [redacted] [redacted] was interviewed a second time by OI on September 12, 2002. [redacted] was apprized that a number of witnesses had contradicted his assertion that no one reported an FFD concern to him at Kewaunee concerning [redacted]. [redacted] again denied that he ever requested [redacted] to be FFD tested, and acknowledged that his previous statements concerning this matter were true and correct. [redacted] also confirmed that no one "officially" came to him and reported an FFD concern involving [redacted]. [redacted] specifically denied that either [redacted] or [redacted] told him they would not work for [redacted] because they thought he was a drunk or smelled of alcohol (Exhibit 15, pp. 4-8).

[redacted] stated that he spoke with DZNPS management, "after the fact," about the issues [redacted] had raised, including, ". . . service water, piping beam, control of air conditioning supports, fitness for duty" (Exhibit 15, pp. 8-11).

Randall CLEVELAND, Access Manager for NMC, told OI that he first learned of an FFD concern at Kewaunee on December 19, 2001, when he was notified by the Program Manager of the Employee Concerns Program that an internal investigation had uncovered FFD concerns. CLEVELAND stated that the investigation concluded that, ". . . four individuals that had

NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III

7C

indicated they smelled alcohol on a coworker and had failed to go forward to supervision with that observation" (Exhibit 16, pp. 5-7).

CLEVELAND stated that the FFD issue eventually was elevated to the site Vice President, however, he acknowledged that at the time of the outage in 2001, no one within NMC management was aware of any FFD concern (Exhibit 16, p. 21).

3. Unfavorable Action Taken Against [REDACTED]

On January 14, 2002, CLEVELAND placed a hold in the PADS on [REDACTED]. CLEVELAND stated, "The reason for that is that we were concerned he may have observed or had observations concerning the coworker's fitness for duty that had not been properly reported. So we placed that hold and ultimately denied his access based on inconsistent information provided to both, primarily to NMC investigators and comparing that information to the [NMC] Walker Report" (Exhibit 16, p. 12).

Agent's Note: PADS is an electronic data base utilized by the nuclear industry for the purpose of transferring access from site to site. An entry in the ADD. (Additional) INFO (Information) column indicates a flag which alerts any utility that there is an issue or concern that was addressed with the employee. According to CLEVELAND, the expectation is that a utility would obtain details as to what the issue or concern is and make its own decision with respect to access based upon their review of that information.

4. Did the Unfavorable Action Resulted from [REDACTED] Engaging in Protected Activity

CLEVELAND acknowledged to OI that during NMC's investigation of the FFD concern, [REDACTED] provided conflicting information. CLEVELAND recalled that according to the NMC investigator [REDACTED] had claimed to have been escorted to be FFD tested by [REDACTED]. [REDACTED] claimed to have told the technician that [REDACTED] should be the one being tested. [REDACTED] told the NMC investigator that the technician had made a comment to [REDACTED] in agreement, indicating that [REDACTED] "was a little ripe." CLEVELAND stated that he was able to identify the date [REDACTED] had been randomly tested, the technicians involved were interviewed and they failed to corroborate [REDACTED]'s statements to the investigator. CLEVELAND acknowledged that [REDACTED] access was subsequently denied (Exhibit 16, pp. 16-18).

CLEVELAND stated that on March 27, 2002, PETERS interviewed [REDACTED] at Point Beach. CLEVELAND stated that PETERS told him that [REDACTED] denied that at the time he was being escorted to the collection site, he had commented to a coworker and not to the technician, wondering why [REDACTED] was not the one being tested. CLEVELAND told OI that on

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

76

June 12, 2002, he and PETERS interviewed [REDACTED]. CLEVELAND stated that [REDACTED] denied being escorted by a worker to the collection site and claimed he had asked the technician [collector] why they were not testing [REDACTED]. "So again the recollection had changed and three different versions here" (Exhibit 16, pp. 18-19).

CLEVELAND stated that [REDACTED] had originally indicated to NMC's investigator that [REDACTED] "was loaded every morning." CLEVELAND stated that in an interview with PETERS, [REDACTED] denied any knowledge of [REDACTED] being drunk. "Based on that information, conflicting information he was providing NMC investigators, his access was denied. He was sent a letter detailing exactly what had occurred here, afforded the opportunity to request a review of that decision. Did not exercise that right. He had 30 days to do that and we did not receive a request for review." CLEVELAND indicated that normal suspension was for 1 year (Exhibit 16, pp. 19-20).

CLEVELAND stated that approximately four weeks prior to the OI interview, which was conducted on September 17, 2002, [REDACTED] had contacted him and requested a review of the status of his access. CLEVELAND stated that he informed [REDACTED] that he would get back to him, "within the next couple of weeks." CLEVELAND recalled that two weeks later he received a voicemail message from [REDACTED] indicating his frustration with CLEVELAND's lack of response and [REDACTED] ended the message with obscenities stating that if CLEVELAND did not respond within 24 hours, he would contact the NRC. CLEVELAND stated that he completed the review of [REDACTED]'s case and [REDACTED] was informed that he was not eligible for reconsideration. CLEVELAND stated that he received a follow-up request from [REDACTED] asking for an explanation, which is currently under review. CLEVELAND explained that his decision to continue to withhold [REDACTED]'s access is based upon the original determination, that he provided inconsistent information to NMC investigators (Exhibit 16, pp. 31-33).

CLEVELAND denied that [REDACTED]'s access was denied in retaliation for raising an FFD concern. During the OI interview, CLEVELAND was unable to confirm whether he knew on January 14, 2002, the date [REDACTED]'s access was denied, that [REDACTED] had raised an FFD concern involving [REDACTED]. By letter dated September 27, 2002, CLEVELAND stated, "Based upon a review of investigator notes and access decisions, I was not aware that [REDACTED] had made an FFD allegation at the time decisions were made concerning his access status. I had no knowledge as to whether he had made an FFD allegation (e.g., to the NRC, NMC Employee Concern Program or Day & Zimmerman NPS, Inc.)" (Exhibit 16, p. 33; Exhibit 17).

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

Agent's Analysis

Despite [redacted]'s denial that he had been informed of an FFD concern involving [redacted] during the 2001 Kewaunee outage, the evidence developed during OI Case No. 3-2002-004 substantiated that [redacted] had, in fact, raised an FFD concern to [redacted]'s first line supervisor. There was however, testimony from [redacted], and [redacted], that it was apparent that [redacted] took no action to have [redacted] FFD tested, nor was the issue discussed again during the outage. [redacted] further admitted that he did not pursue the matter further, although it was apparent that no action was taken. [redacted], and [redacted] the DZNPS supervisors, provided testimony that they did not elevate the FFD concern to DZNPS management.

[redacted] contends that the false statements made by [redacted] a DZNPS employee, have caused another contractor, Phillips Getschow to deny him employment. However, based upon [redacted]'s testimony, Phillips Getschow was prepared to hire him, until they discovered that NMC would deny him site access. There was no testimony indicating that DZNPS management was aware that [redacted] had raised an FFD concern at Kewaunee during the 2001 outage.

The FFD concern involving [redacted] came to NMC management's attention in November 2001, after being notified of an allegation received by the NRC. After conducting their own internal investigation, decisions were made by the NMC Access Manager to put a hold in PADS on the site access of a number of DZNPS employees who admitted knowledge of the FFD concern, but had failed to report the concern. The decision to place a hold on [redacted] site access was made based upon the information NMC obtained through their own investigation. Based upon the NMC investigation, CLEVELAND determined that there was a concern that [redacted] may have observed or had observations concerning the coworker's FFD that had not been properly reported. [redacted] had admitted knowledge of the FFD concern to the licensee's investigator on January 11, 2002. According to the Report of Interview prepared by the NMC investigator, [redacted] indicated that he had "attempted" to inform both [redacted] and [redacted] of an FFD concern involving [redacted] but was ignored.

CLEVELAND denied that he had knowledge that [redacted] had reported an FFD concern involving [redacted] at the time he made the determination to place a hold on [redacted]'s site access, on January 14, 2002. Since the FFD concern involving [redacted] was never followed through, NMC management was never aware of the issue. Information indicating that [redacted] had not been truthful during the NMC investigation and the OI investigation came to light in approximately March 2002, after [redacted] had a conversation with [redacted]. CLEVELAND stated that two subsequent interviews were conducted with [redacted] in March and June 2002, to sort out the site access matter. CLEVELAND determined that during those

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

interviews [REDACTED] provided a number of contradictory statements, and it was determined that [REDACTED] was not eligible for reinstatement of his site access at NMC.

CLEVELAND stated that [REDACTED]'s access was not denied because he had raised an FFD concern. [REDACTED] access was placed on hold due to the contradictory statements he made to NMC investigators.

#### Conclusion

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

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

7C

**THIS PAGE LEFT BLANK INTENTIONALLY**

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

LIST OF EXHIBITS

| <u>Exhibit No.</u> | <u>Description</u>  |
|--------------------|---|
| 1                  | Investigation Status Record, OI Case No.: 3-2002-020, dated August 6, 2002.   |
| 2                  | Transcript of Interview of [REDACTED] August 5, 2002.                         |
| 3                  | Letter from NMC to [REDACTED] dated June 28, 2002.                            |
| 4                  | RIII ARB Minutes, dated August 5, 2002.                                       |
| 5                  | Letter from NRC:RIII to Mark E. REDDEMANN, dated November 19, 2001.           |
| 6                  | Letter from NMC to NRC:RIII EICS, dated February 8, 2002.                     |
| 7                  | OI Report of Investigation, OI-Case No.: 3-2002-004, dated November 30, 2002. |
| 8                  | WIC Reports of Telephone Interview of [REDACTED] dated January 11-12, 2002.   |
| 9                  | PADS Security Report for [REDACTED] dated September 17, 2002.                 |
| 10                 | Transcript of Interview of [REDACTED] dated August 12, 2002.                  |
| 11                 | Transcript of Interview of [REDACTED] dated August 5, 2002.                   |
| 12                 | Transcript of Interview of [REDACTED] dated June 6, 2002.                     |
| 13                 | Transcript of Interview of [REDACTED] dated September 4, 2002.                |
| 14                 | Transcript of Interview of [REDACTED] dated September 12, 2002.               |
| 15                 | Transcript of Interview of [REDACTED] dated September 12, 2002.               |
| 16                 | Transcript of Interview of CLEVELAND, dated September 17, 2002.               |
| 17                 | Letter from CLEVELAND to Mary Kay Fahey, dated September 27, 2002.            |

NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III

7C