



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BLVD
ARLINGTON, TEXAS 76011-4511

August 19, 2013

EA-13-152

Matthew W. Sunseri, President and
Chief Executive Officer
Wolf Creek Nuclear Operating Corporation
P.O. Box 411
Burlington, KS 66839

**SUBJECT: WORK ENVIRONMENT ISSUES AT WOLF CREEK GENERATING STATION –
CHILLING EFFECT**

Dear Mr. Sunseri:

The purpose of this letter is to determine if Wolf Creek Nuclear Operating Corporation (WCNOC) is taking appropriate actions to ensure Wolf Creek Generating Station (WCGS) is a workplace that fosters an environment where employees feel free and are encouraged to raise safety concerns. This letter is being issued to ensure that WCNOC is aware of two NRC concerns with the safety conscious work environment (SCWE) at the WCGS, and to obtain information about your assessment of your employees' willingness to raise safety concerns at WCGS and the description of any remedial action you and your staff have taken or planned to address any identified weaknesses as a result of the assessment.

The NRC's Policy Statement entitled, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns without Fear of Retaliation," (Volume 61 of the Federal Register, page 24336; May 14, 1996), the NRC Regulatory Issue Summary 05-018, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment," dated August 25, 2005, and "Reporting Safety Concerns to the NRC," NUREG/BR-0240, Rev. 6, dated May 2012, describe the NRC's expectations in this area.

Discrimination Concern and its Potential Impact on the SCWE

On July 25, 2012, the U.S. Department of Labor's (DOL) Occupational Safety & Health Administration (OSHA) in Kansas City, Missouri, received a complaint from a former employee of Enercon Services, Inc., a contractor at the WCGS. The former employee alleged that he was terminated by Enercon Services, Inc., because he had raised safety concerns while performing his duties at WCGS.

In response to that complaint, OSHA conducted an investigation, and in a letter dated May 15, 2013, the Regional Administrator for OSHA, Region VII, found that the evidence obtained during OSHA's investigation indicated that the employee was engaged in a protected activity within the scope of the Energy Reorganization Act. Additionally, the evidence indicated

that the protected activity was a contributing factor in the adverse actions specified in the employee's complaint.

Specifically, OSHA's finding concluded that Enercon Services, Inc., a contractor employed by WCNOG, discriminated against this former employee for raising nuclear safety issues at WCGS. This is a violation of Section 211 of the Energy Reorganization Act (ERA), 42 U.S.C. § 5851. Enercon Services, Inc., has appealed for a full hearing on the OSHA decision before an Administrative Law Judge, and that appeal is pending. We have reviewed the OSHA findings, and as is our normal practice, we will monitor the DOL proceedings to determine whether or not revisiting this matter is warranted.

The NRC is concerned that, because of the OSHA decision, the potential exists for a chilling effect on the SCWE at WCGS. Specifically, our concern is that WCGS employees and its contractors could be reluctant to identify or raise potential safety concerns for fear of similar retaliation.

Therefore, the NRC is requesting that WCNOG inform the NRC of any actions it has taken, is taking, or plans to take to prevent this event from having a negative effect on the willingness of all WCGS employees and its contractors to raise safety and compliance concerns. This request is detailed later in this letter. After reviewing your response, the NRC will determine whether any further action is warranted.

Chilled Work Environment Concern

The NRC has determined that a portion of the WCGS workforce has the perception that they are not free to raise safety concerns using all available avenues without fear of retaliation. Specifically, the NRC has determined, through inspections and interviews, that members of the Quality Assurance Group within the Quality Department have the perception that they are not free to raise safety concerns through the corrective action program or their management. Many are also unwilling to use the Employee Concerns Program to resolve concerns.

Compounding that perception is the belief by some WCGS employees in the Quality Assurance Group that certain individuals within their group have been retaliated against for raising safety concerns. Furthermore, WCGS' management has not been effective in assuring employees within this group that they may raise safety issues without fear of retaliation. These conclusions are based on multiple observations, including: (1) policies in the QA Group that appear to restrict the writing of condition reports, (2) the hesitancy to report some types of problems and hesitancy to use some methods of problem reporting by most members of the QA Group, (3) employees from the QA Group (and other work groups) expressing difficulty with using, or the inability to use, the corrective action program, and (4) a continuing perceived fear of retaliation of raising safety concerns within the group. These factors have led to the NRC determination that a chilled environment for raising and addressing safety concerns exists at WCGS within the Quality Assurance Group.

The NRC has identified that safety concerns are being raised by WCGS personnel through some communication avenues, and has not identified any safety issues that were not reported by some available avenue. The NRC has determined that some employees in the QA Group do not consider certain avenues available, such as discussing a concern with their immediate supervisor, but would find an alternate avenue to communicate their safety concern.

The NRC has received a significant increase in the number of allegations from onsite sources at WCGS since 2010. During this time, there was a significant increase in chilling effect and discrimination concerns raised to the NRC as compared to prior years. In addition, there was a notable increase in the number of concerns raised regarding the effectiveness of the corrective action program. These allegations were received from multiple onsite organizations, but were predominantly from employees in the Quality Department.

The NRC has noted that WCGS has had multiple substantive cross-cutting issues for a prolonged period of time in the areas of human performance and problem identification and resolution. The NRC recently completed a supplemental inspection to assess your efforts to address a Yellow finding (Inspection Report 05000482/2013010; ML13203A329). The team also evaluated your actions to improve the safety culture of the WCGS staff and to resolve the substantive cross-cutting issues. From the results of this inspection, it was apparent that there have been significant improvements toward resolving the underlying safety culture issues, and that the WCGS staff have embraced these efforts. However, the inspection team determined that additional effort is needed.

According to NRC Management Directive 8.8, "Management of Allegations," a "chilling effect" can occur when an event, interaction, decision, or policy change results in a perception that the raising of safety concerns to the employer or to the NRC is being suppressed or is discouraged. A "chilled work environment" exists when that perception is held by multiple employees within a group or throughout the organization's work environment. The NRC's review of the work environment in the Quality Assurance Group concluded that the workers' perceptions of the existing policies, even if not consistent with the intent of the policies, met the definition of a chilled work environment. The NRC's interviews further indicated that workers in the Quality Assurance Group perceived that reporting certain types of problems to their management was effectively being discouraged.

Accordingly, based on the results of focus group interviews and inspection activities performed in accordance with Inspection Procedure 40100, "Independent Safety Culture Assessment Follow-up," the NRC has concluded that a chilled work environment exists in the Quality Assurance Group at WCGS.

It is important to note that our assessment did not find evidence of a chilled work environment in other portions of the staff. In fact, this inspection identified that broad improvements have been made in the safety culture, including the SCWE, at WCGS. Notwithstanding that observation, additional attention is warranted to ensure that the OSHA finding of discrimination does not create a chilling effect, and that the chilled work environment that exists in the Quality Assurance Group is promptly evaluated and addressed.

Supporting details from NRC inspections, allegation statistics, and NRC conducted focus group interviews are provided in the enclosure to this letter.

Action:

Within 30 days of the date of this letter, the NRC requests that WCNOG provide:

- (1) Your position regarding whether the actions of Enercon Services, Inc., as described earlier in this letter, violated 10 CFR 50.7 and the basis for your position, including the results of any investigations you may have conducted to determine whether a violation occurred;
- (2) Actions you have already taken or plan to take to assure that the OSHA finding of discrimination by Enercon Services, Inc. is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within your organization and, as discussed in NRC Form 3, to the NRC¹;
- (3) Your action plans to address existing SCWE issues in the Quality Department to improve the environment in the department and, if appropriate, throughout WCGS.¹ The action plans, at a minimum, should specifically address how policies can be assured of setting a low threshold for writing condition reports and how each avenue for raising concerns will be improved, including ease of use and accessibility of the corrective action program, knowledge and use of the Employee Concerns Program, availability of the NRC, and WCGS's open door policy. Also include the measures that will be used to determine your action plan effectiveness;
- (4) Your plan to communicate expectations and policies concerning SCWE at WCGS, and methods used to verify that all WCGS and contractor personnel have received the message and clearly understand it;
- (5) Your plan to ensure that individuals who are not satisfied with the resolution of a problem can pursue the concern further through additional avenues (such as WCGS management, the corrective action program, the Employee Concerns Program, or the NRC) without fear of retaliation;
- (6) What actions you have taken or plan to take to ensure that actions taken against individuals are not perceived as retaliatory to avoid a further chilling of the environment at WCGS; and
- (7) Your plans to inform the WCGS workforce, including contractors, of: (i) the issuance and content of this chilling effect letter; (ii) the current status of SCWE at WCGS; and (iii) your action plans to address the SCWE issues.

The NRC also requests that WCNOG provide in writing, within 6 months of the date of this letter:

- (1) The results of your evaluations of progress in addressing the SCWE concerns at WCGS;
- (2) The effectiveness of actions taken to address the SCWE concerns identified above;

¹ If further assessment of the SCWE is undertaken, that assessment should be conducted by persons both independent of the chilled organization and knowledgeable and experienced in conducting such assessments. If individuals are interviewed as part of your review, your response should include the basis for determining that the number and cross section of individuals interviewed was appropriate to obtain the information necessary to fully evaluate the chilled work environment, and the interview questions used.

- (3) Any additional actions or changes in actions planned and taken to address SCWE issues at WCGS.

Following receipt and review of WCNOG's response, we will determine if a meeting is needed to discuss WCNOG's approach and schedule, and the NRC's planned oversight.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC's website at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Because your response will be placed and made available electronically for public inspection in the NRC Public Document Room or from the PARS component of ADAMS, to the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information.

If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

If you have any additional questions regarding these matters, please contact Mr. Neil O'Keefe, Chief, Reactor Project Branch B, at (817) 200-1141.

Sincerely,

/RA/

Steven A. Reynolds
Acting Regional Administrator

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Enclosure:
Background Information

cc w/ encl: Electronic Distribution

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ADAMS	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete		Reviewer Initials:
<input checked="" type="checkbox"/> Publicly Available	<input type="checkbox"/> Non-publicly Available		<input type="checkbox"/> Sensitive	<input checked="" type="checkbox"/> Non-sensitive	
Category:		KEYWORD:			
C:PBB	C:ACES	OE	RC	D:DRP	
NO'Keefe	HJGepford	LMJarriel	KFuller	KMKennedy	
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BACKGROUND INFORMATION

Background

The NRC has seen an increase in the number of allegations for WCGS since 2010, which included 19 concerns related to the SCWE and alleged harassment and intimidation or discrimination (HIRD) at Wolf Creek. These allegations have included 5 concerns involving individuals who were reportedly terminated for raising safety concerns, 3 concerns involving individuals who reportedly had adverse actions (other than termination) taken against them for raising safety concerns, and 11 concerns involving a chilled work environment. While many have not been substantiated, the types of concerns often provide important information about the effectiveness of problem reporting and resolution in areas like safety culture.

The concerns received since 2011 related to employee termination for raising safety concerns involved contract workers, either working directly for WCNOG or for contractor organizations onsite. The concerns regarding a chilled work environment have been predominantly related to the Quality Assurance Group, as evidenced by 8 of the 11 concerns specifying the Quality Assurance Group.

On July 22, 2013, the NRC issued NRC Inspection Report 05000482-2013010 (ADAMS ML13203A329) to document the results of a supplemental team inspection. This inspection included an independent assessment of the safety culture at WCGS, as well as a review of WCGS's progress in addressing the four open substantive cross-cutting issues, which are safety culture elements. This report documented clear signs of improvement overall, but also indicated that there were some specific areas needing improvement.

Based on the results of your 2012 Safety Culture Assessment, the Nuclear Safety Culture Monitoring Panel identified two work groups as needing to improve safety culture, which included the Quality Assurance Group. Our focus group discussions and other reviews indicate that actions taken to improve safety culture issues in this group have not yet been effective, although improvement was apparent in the other group.

WCGS has implemented actions to improve the QA audits conducted at the station. However, some of these actions appear to have been perceived in such a way that they could create a chilled work environment within the Quality Assurance Group. The improvement efforts included creating a policy where Quality Assurance Group workers must have a peer or supervisory review of a proposed condition report before submitting it. Our inspection noted that WCNOG implemented this policy in order to improve clarity, grammar and eliminate typographical errors. However, it had an unintended impact of creating the perception that management had to agree with the reported problem in order to report the problem.

Our inspection determined that the Quality Assurance Group workers perceived this policy change to mean that management is suppressing or discouraging the raising of safety concerns. The combination of the perception and the number of the workers involved indicates that a chilled work environment exists in the Quality Assurance Group. Our inspection also determined that some Quality Assurance Group members believed that individuals writing anonymous condition reports could be identified and retaliated against.

The NRC found that other actions within the Quality Assurance Group have resulted in the perception by group members that Quality Assurance observations should focus on craft personnel deficiencies and not on leadership short-comings, thus limiting their ability to report problems involving WCNOC leadership. There is also a perception that management at WCNOC has threatened to reassign multiple Quality Assurance Group members to other activities at the site. Although this knowledge has not yet impacted the broader staff, the NRC is concerned that this potential exists and that action should be taken to address this potential.

The trend in allegations that contract workers have been terminated for having raised safety concerns is also of concern. In a letter dated May 15, 2013, the Regional Administrator for OSHA, Region VII, found that the evidence obtained during OSHA's investigation indicated that a former employee of Enercon Services, Inc., a contractor employee of WCNOC, was engaged in a protected activity within the scope of the Energy Reorganization Act, and that the evidence indicated that the protected activity was a contributing factor in the adverse actions specified in the employee's complaint. This finding is being appealed by Enercon Services, Inc. However, this finding was publically reported and is now widely known. The NRC is concerned that this finding may create a chilling effect among WCNOC site workers and contractors. Action may be needed to ensure that this does not occur.