

December 30, 2003

EA-03-105

Mr. Thomas Coutu
Site Vice President
Kewaunee Nuclear Plant
Nuclear Management Company, LLC
N490 Highway 42
Kewaunee, WI 54216-9511

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$60,000 (NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-004)

Dear Coutu:

This refers to information received by the U.S. Nuclear Regulatory Commission (NRC) on November 8, 2001, concerning the alleged failure to properly implement the NRC required fitness for duty (FFD) program at the Nuclear Management Corporation's (NMC) Kewaunee Nuclear Plant. The issue was investigated by NMC and the NRC Office of Investigations (OI). An apparent violation of the Kewaunee FFD program by a supervisor employed by Day and Zimmerman Nuclear Power System (D&Z), a contractor at the Kewaunee Nuclear Plant, was identified. A summary of the OI report was provided to NMC on June 9, 2003, and a predecisional enforcement conference (PEC) was held with NMC on July 16, 2003. A PEC was held on August 5, 2003, with the D&Z supervisor.

Based on information developed during the NMC and OI investigations, information you provided during the July 16, 2003, PEC and in your August 29, 2003, letter, and information provided by the D&Z supervisor at the PEC on August 5, 2003, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). The circumstances surrounding the violation are described in the July 16 and August 29, 2003, letters.

Around July or August 2001, two D&Z employees told a D&Z supervisor that they refused to work with a third D&Z employee because they believed the third employee was "a drunk." Subsequently, the supervisor detected an odor that he believed may have been alcohol on the employee. The D&Z supervisor had received FFD training as a part of general employee training for unescorted access to the Kewaunee Nuclear Plant. As a result, he believed that if a fitness for duty concern with an employee were brought to his attention, he was required to observe the employee for signs of impairment and to take the employee to security. Because he observed the employee and did not detect any signs of impairment, the supervisor did not pursue the matter. The supervisor did not ask the employee if he had been drinking, did not report the matter to security, did not send the employee to for-cause FFD testing, or take any action to ensure the incident was investigated. The supervisor's explanation for not taking action in response to smelling alcohol in the vicinity of the employee was that there was talk

that the employee had a medical condition that caused him to smell of alcohol; however, the supervisor took no action to verify this condition. In view of the supervisor's training, his knowledge that the employee was a heavy drinker and was reputed to have a drinking problem, his having detected what he believed was the possible odor of alcohol on the employee, and his failure to verify the medical condition, the supervisor's failure to send the D&Z employee to security or take other action to ensure the incident was investigated is considered a willful violation in careless disregard of the FFD program of the Kewaunee Nuclear Plant. Therefore, the violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for a Severity Level III violation. Because this was a willful violation, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy." The NRC recognizes that NMC performed several investigations to resolve the matter. Nevertheless, it was an allegation to the NRC, and not independent action by NMC, that identified the violation. Therefore, credit is not warranted for the *Identification* civil penalty adjustment factor. The NRC determined that credit was warranted for the *Corrective Action* civil penalty adjustment factor. Corrective actions consisted of, but were not limited to: (1) coaching and counseling the D&Z supervisor; (2) reminding all employees of the appropriate actions if an employee is suspected of being unfit for duty; (3) modifying FFD procedures; and (4) improving employee FFD training.

Therefore, to emphasize the importance of prompt identification of violations and the need to maintain a work environment at nuclear power plants that is free from the effects of drugs and alcohol, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$60,000 for the Severity Level III violation.

As described in our letter of June 9, 2003, a potential violation of 10 CFR 50.9, "Completeness and Accuracy of Information," associated with the FFD issue, was originally considered for enforcement action. Subsequent to that letter, NMC interviewed several witnesses and presented the results of the interviews at the PEC on July 16, 2003. Following, the PEC, NMC conducted additional interviews and submitted the results to the NRC with its August 29, 2003, letter. Because the facts of the matter cannot be sufficiently determined, the NRC staff has decided not to pursue enforcement action for this matter.

Our June 9, 2003, letter also discussed alleged employment discrimination at NMC's Point Beach Nuclear Plant that may have related to the FFD issue at the Kewaunee Nuclear Plant. Based on the evidence obtained during the OI investigation (OI Report No. 3-2002-020), it could not be concluded that employment discrimination occurred. A copy of the OI report synopsis was enclosed with that letter. Also in that letter, we requested that NMC address any potential "chilling effect" that may have resulted from that FFD issue. Based on the information you presented at the PEC on July 16, 2003, it does not appear that a "chilling effect" occurred, and we have no further questions in that regard.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Should you chose to respond, your response, to the extent possible, should not include any personal privacy, proprietary, or safeguards information so that the response can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/ Geoffrey E. Grant for

James L. Caldwell
Regional Administrator

Docket No. 50-305; 50-266; 50-301
License No. DPR-43; DPR-24; DPR-27

Enclosures: 1. Notice of Violation and Proposed
Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

FILE NAME: G:\EICS\03-105 SL III & \$60K CP.wpd

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NAME	Weil		Dambly		Congel		Caniano for Pederson		Clayton		Grant for Caldwell	
DATE	12/22/03		12/18/03		12/18/03		12/22/03		12/24/03		12/2403	

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¹ OGC no legal objection received 12/18/03 from Jenny Longo, OGC.

² OE concurrence received 12/18/03 from Jennifer Dixon-Herrity, OG.

cc w/encl 1: D. Graham, Director, Bureau of Field Operations
Chairman, Wisconsin Public Service Commission
State Liaison Officer
A. J. Cayia, Site Vice President
Point Beach Nuclear Plant
R. Grigg, President and Chief
Operating Officer, WEPCo
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Enforcement Coordinators

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Nuclear Management Company, LLC
Kewaunee Nuclear Plant

Docket No. 50-305
License No. DPR-43
EA-03-105

During an NRC investigation concluded on November 29, 2002, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 26.20 requires, in part, that each licensee subject to 10 CFR Part 26 establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of 10 CFR Part 26, including policies to address the abuse of legal drugs (e.g. alcohol).

10 CFR 26.24(a) requires, in part, that the licensee implement chemical testing programs for persons subject to 10 CFR Part 26 to provide a means to deter and detect substance abuse, including testing for-cause, i.e., as soon as possible after receiving credible information that an individual is abusing alcohol.

Kewaunee Nuclear Power Plant Nuclear Administrative Directive (NAD) 01.04, "Fitness for Duty Program," Revision C, November 16, 1999, Section 2.1 of NAD 01-04 provides, in part, that NAD 01.04 applies to all persons who have been granted unescorted access to the Kewaunee Nuclear Power Plant. NAD-01-04 states in Section 5.8, "Requirements", that effective monitoring and testing procedures will be implemented to provide reasonable assurance that personnel with access are fit for duty. Section 7 of NAD 01.04 lists the procedures that have been established to implement the Kewaunee Nuclear Power Plant Fitness for Duty Program. General Nuclear Procedure (GNP) 1.4.4, "Behavioral Observed Just Cause Testing," is one of the implementing procedures described in Section 7 of NAD 01.04.

Section 5 of GNP 1.4.4 provides, in part, that the licensee is committed to a program of continued observation of contractors for indication of any on-the-job behavior which may impair job performance. When such behavior is detected, corrective measures shall be taken, including an investigation of the circumstances and an evaluation of the risk involved in continuing unescorted access to the Kewaunee Nuclear Power Plant.

Contrary to the above, during July or August 2001, the licensee failed to implement effective monitoring procedures to provide reasonable assurance that personnel with access are fit for duty, and the licensee failed to conduct an investigation of the circumstances or evaluate the risk involved in continued unescorted access of an employee after detecting evidence of behavior which may have impaired the job performance of an employee who had unescorted access to the Kewaunee Nuclear Plant. Specifically, a supervisor of Day and Zimmerman Nuclear Power Systems (D&Z), a contractor at the Kewaunee Nuclear Plant, detected the possible odor of alcohol on a

D&Z employee. The supervisor was informed that the employee was a heavy drinker and that the employee was reputed to have an alcohol problem. However, the supervisor failed to take corrective measures including investigation of the circumstances or sending the employee to for-cause Fitness for Duty testing.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$60,000

Pursuant to the provisions of 10 CFR 2.201, Nuclear Management Company, LLC (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation, EA-03-105" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Notice of Violation and Proposed
Imposition of Civil Penalty

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Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Frank J. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, and a copy to the NRC Resident Inspector at the Kewaunee Nuclear Plant

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then 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 material, 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 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 30th day of December 2003.