

December 23, 2005

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

THRU: J. E. Dyer, Director **/RA/ 1/5/06**
Office of Nuclear Reactor Regulation
/RA by Geoffrey E. Grant Acting For/

FROM: James L. Caldwell, Regional Administrator

SUBJECT: ONE-TIME DEVIATION FROM REGULATORY RESPONSE
COLUMN OF REACTOR OVERSIGHT PROCESS ACTION
MATRIX - POINT BEACH

Inspection Manual Chapter 0305, Operating Reactor Assessment Program, requires regions to obtain approval from the Executive Director for Operations to deviate from the regulatory actions dictated by the Action Matrix, Section 06.05, of the manual chapter. The Action Matrix includes a range of licensee and NRC actions for each column of the Matrix. However, as discussed in the manual chapter, there may be instances in which the actions prescribed by the Action Matrix may not be appropriate.

This memorandum requests your approval to deviate from some of the actions required by the Action Matrix for both Point Beach units. Point Beach is currently in the "Multiple/Repetitive Degraded Cornerstone" column (Column IV) of the Action Matrix due to a Red finding associated with the Auxiliary Feedwater system (Mitigating Systems cornerstone in the Reactor Safety Strategic Performance arena). In accordance with Section 06.06 (e) of Manual Chapter 0305, if a White inspection finding or PI subsequently occurs in an unrelated cornerstone or strategic performance area, the associated supplemental inspection should be conducted at the appropriate level. Ordinarily, performance assessed with a White finding would require the licensee to develop a root cause evaluation and assign corrective action with NRC oversight. The NRC would perform supplemental inspection procedure 95001 in accordance with the Action Matrix requirements. Additionally, this White input in the Strategic Performance Area would potentially contribute to licensee movement towards increasing regulatory action should future White inputs occur. The actions we propose in this memorandum would allow for the appropriate treatment of an old inspection item that is not indicative of current performance. Due to involvement by the Office of Investigations and United States Department of Justice, an Emergency Preparedness (EP) issue that occurred in 2002 did not receive formal NRC technical resolution until 2005. Based on the following considerations, we believe that the regulatory actions outlined below are more appropriate for treatment of the Point Beach EP issue that occurred in 2002.

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Background**Point Beach Overall Station Performance**

In the first quarter of 2003, the licensee entered the "Multiple/Repetitive Degraded Cornerstone" column (Column IV) of the Action Matrix. From July 28 to December 16, 2003, the NRC conducted a three-phase supplemental inspection to review the corrective actions for the two AFW issues, in accordance with NRC Inspection Procedure (IP) 95003, "Supplemental Inspection for Repetitive Degraded Cornerstones, Multiple Degraded Cornerstones, Multiple Yellow Inputs, or One Red Input." As part of the IP 95003 inspection, the NRC also performed Attachment 95003.01 ("Additional Emergency Preparedness Cornerstone Inspection"). The results of this inspection were documented in Inspection Report (IR) 05000266/2003007; 05000301/2003007, dated February 4, 2004.

This inspection (Attachment 95003.01) included 2 weeks of onsite inspection by two senior EP inspectors and two senior EP specialists from Headquarters. Subsequently, on March 17, 2004, a Notice of Violation and a \$60,000 civil penalty were issued for a problem identified during the IP 95003 inspection regarding unauthorized changes to the Emergency Action Level scheme in the Point Beach Emergency Response Plan.

On April 21, 2004, Confirmatory Action Letter (CAL) 3-04-001 was issued documenting commitments made by Nuclear Management Company, LLC (NMC) in a March 22, 2004 letter, to address areas of regulatory concern identified during the IP 95003 inspection. The basis for these commitments was the NMC Point Beach Excellence Plan, an improvement plan intended to focus the Point Beach organization, site programs, and initiatives on not only the performance issues identified during the IP 95003 inspection, but also on issues identified through internal assessments and in areas for meeting NMC's goal of improving performance at Point Beach.

In response to the 95003 inspection's conclusions, the licensee developed six Action Plans focused on its EP Program in its overall Excellence Plan. Follow-up EP inspections on completed steps of these six Action Plans were conducted in 2004 and 2005 (IR 05000266/2005007, 05000301/2005007; IR 05000266/2005009, 05000301/2005009; and IR 05000266/2005010, 05000301/2005010). No new or additional findings were identified. Additionally, the three EP Performance Indicators (PIs) have remained in the Licensee Response Band since January 2003. After the completion of the inspections, the NRC informed the licensee in a letter dated September 6, 2005, that actions taken by NMC in the Emergency Preparedness Area of Regulatory Concern had been adequate and provided reasonable assurance of sustainability. Consequently, no further review of this area was planned other than that which may occur during the normal baseline program inspections.

Point Beach White Emergency Preparedness Finding

On August 1, 2002, Point Beach Plant resident inspectors observed an EP drill. Concurrently, the NRC was finalizing a White finding on the licensee's inadequate critique of offsite and onsite protective action decision making during its February 2002 biennial EP exercise. The finalized White finding on the February 2002 exercise critique was issued in September 2002. The August 2002 drill was the first drill for which the licensee was taking credit for Drill/Exercise Performance (DEP) PI opportunities since its February 2002 EP exercise.

Resident inspectors assessed the licensee's capability to critique its August 2002 drill performance, independently developed their assessments of drill participants' performances, and compared them to the licensee's critique results. The resident inspectors identified concerns associated with the adequacy of the licensee's critique of two of the August drill's 10 DEP PI opportunities - the timeliness of the Alert declaration and the accuracy of the Site Area Emergency notification. The licensee's critique indicated that both were successful PI opportunities; however, the residents concluded that both were unsuccessful PI opportunities. The resident inspectors initiated Unresolved Item (URI) 05000266/2002-010-04; 05000301/2002-010-04 to track the concern on the licensee's critique of both PI opportunities.

During the week of November 18, 2002, the region initiated a 95001 inspection to assess licensee actions on the White finding associated with the inadequate critique of protective action decision making during the February 2002 exercise, as well as follow-up of the URI. On November 20, 2002, during the IP 95001 inspection, the EP Manager responsible for Point Beach and Kewaunee Plants' EP programs presented a drill critique record associated with the August 2002 drill that the inspectors had not yet seen. The EP Manager was accompanied by a Kewaunee Plant EP Coordinator who was involved in the critique of the August 2002 drill. The EP Manager claimed that this critique record, which was a PI evaluation form associated with the Alert declaration, indicated that the licensee's critique had identified, prior to the resident inspectors' identification, that the Alert declaration was an unsuccessful PI opportunity.

The inspectors were concerned about the veracity of the critique record presented by the EP Manager to an extent that inspection on the URI ceased. At this time, the EP inspectors' preliminary conclusion was that the Alert declaration was untimely and was, therefore, an unsuccessful PI opportunity, while the Site Area Emergency notification was a successful PI opportunity. At an onsite briefing of the Region III DRS Director, consensus was reached to brief the OI Field Office Director on this critique record concern and to formally cease inspection on the URI. As a result, the supplemental inspection report for the February 2002 White finding did not address the URI.

Independent investigations by OI and licensee staffs later concluded that the August drill's critique record on the Alert declaration, which was presented to inspectors on November 20, 2002, had been falsified by the EP Manager and Coordinator on November 15, 2002. The licensee terminated both individuals' employments on December 20, 2002.

On March 11, 2003, the OI investigation on the falsified drill critique record was forwarded to the U.S. Attorney's Office for the Eastern District of Wisconsin. On September 23, 2004, the EP Coordinator voluntarily entered into an agreement with the U.S. Attorney to refrain from involvement in any NRC-licensed activities for the time period ending December 31, 2005, in lieu of prosecution and to accept an Order from NRC. On June 20, 2005, the EP Manager was convicted of a misdemeanor in that he "knowingly made and delivered a writing that contained false statements," and was sentenced to a period of probation, given monetary penalties, and was ordered to refrain from involvement in any NRC-licensed activities.

Due to the OI investigation and resulting Department of Justice actions against the EP Manager and Coordinator, no further inspection was conducted between November 20, 2002, and September 16, 2005, on the URI. As a result, the EP inspectors' preliminary conclusion on the 2002 URI remained undocumented in any inspection report until Inspection Report 05000266/20050-017(DRS); 05000301/20050-017(DRS) (dated October 27, 2005) identified the issue as a preliminary White finding.

Deviation Basis

Based on current plant performance associated with the Emergency Preparedness cornerstone, the region believes that additional NRC assessment and inspection activities associated with the White finding are not warranted.

In response to the concerns identified in the IP 95003 supplemental inspection conducted in 2003, the licensee initiated six EP Action Plans to upgrade its EP program, including measures to upgrade its capabilities to critique drills and exercises and to initiate, track, and resolve critique items. The effectiveness of the licensee's corrective actions to improve its capability to identify, track, and resolve critique items associated with EP drills and exercises has been demonstrated with no findings or Performance Indicators greater than Green identified by NRC on multiple occasions since August 2003. Another factor warranting consideration is that the licensee terminated both individuals' employments on December 20, 2002.

Deviation Request

Both Point Beach units remain in the Multiple/Repetitive Degraded Cornerstone Column (Column IV) of the Action Matrix of NRC Inspection Manual Chapter 0305, "Operating Reactor Assessment Program," as a result of a high safety significance (Red) inspection finding associated with a potential for a common mode failure of the auxiliary feedwater system (AFW) following a loss of the instrument air system, as well as a second Red inspection finding (Yellow for Unit 1 and Red for Unit 2) involving the potential common mode failure of the AFW pumps

due to plugging of the recirculation line pressure reduction orifices. Nothing in this request is intended to change agency actions or plans associated with those already in place to address overall Point Beach performance concerns.

The region requests your approval to deviate from the ROP Action Matrix to provide oversight of the Point Beach EP program in a manner that more accurately reflects current performance of the site. Specifically, the region requests your approval to deviate from the ROP Action Matrix by performing the following actions:

- A. The region would not perform a supplemental 95001 inspection to review the licensee's actions associated with an inadequate critique of the August 2002 EP drill.
- B. The region would enter the inspection item as a White input on the ROP web page, but would not consider the item to be indicative of current licensee performance in the Emergency Preparedness cornerstone. Specifically, the region would not "count" the finding in formulating a regulatory course of action should a new White input occur in the Emergency Preparedness cornerstone.

In summary, we believe the actions already taken have been appropriate and that additional regulatory actions are not warranted. Therefore, your approval of this deviation from the Action Matrix for Point Beach is appreciated. My staff and I are available should you have any further questions in this regard.

Approval: /RA/ 1/9/06
Luis A. Reyes

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- A. The region would not perform a supplemental 95001 inspection to review the licensee's actions associated with an inadequate critique of the August 2002 EP drill.
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