

January 23, 2004

EA-03-194

Mr. William R. Kanda
Vice President - Nuclear, Perry
FirstEnergy Nuclear Operating Company
P. O. Box 97, A210
Perry, OH 44081

SUBJECT: PERRY NUCLEAR POWER PLANT
FINAL SIGNIFICANCE DETERMINATION FOR A WHITE FINDING AND
NOTICE OF VIOLATION (NRC INSPECTION REPORT NO. 50-440/04-03)

Dear Mr. Kanda:

The purpose of this letter is to provide you with the final results of our significance determination of the preliminary White finding identified in Inspection Report No. 50-440/03-06. The inspection finding was assessed using the significance determination process and was preliminarily characterized as White (i.e., a finding with low to moderate increased importance to safety, which may require additional NRC inspections). This preliminary White finding concerned the failure to follow the requirements of the Perry Emergency Plan during an Alert level event on April 24, 2003.

The finding involved an undue delay in declaring an actual emergency condition on April 24, 2003, when the shift manager did not properly classify the event in a timely manner in accordance with your emergency plan when damage to irradiated fuel caused a high alarm on the fuel handling building ventilation exhaust gaseous radiation monitor. This finding was preliminarily classified as White because it involved a failure to implement a risk significant planning standard. This preliminary White finding was associated with an apparent violation of 10 CFR 50.47.

In our letter dated October 30, 2003, transmitting the inspection report, we provided FirstEnergy Nuclear Operating Company (FENOC) an opportunity to request a Regulatory Conference or provide a written response. At your request, a Regulatory Conference was held on December 9, 2003, at the Region III Office in Lisle, IL. A copy of the handout you provided at the conference has been entered in the NRC's document system (ADAMS) and is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, ADAMS accession number ML033500224.

During the conference, you agreed with the NRC's preliminary assessment of the violation and use of the significance determination process, however you requested that the NRC use discretion in determining the significance of the violation. You also believed that the significance would be more appropriately characterized as Green since: (1) actions had been taken to protect onsite personnel; (2) the duration of the building ventilation radiation monitor alarm was short (less than one minute); (3) the building ventilation radiation monitor was in close proximity to the bubbles from the damaged fuel (from which you concluded the exhaust

air that activated the alarm may not have been a representative sample of the building's air); (4) the technicians inspecting the fuel did not associate bubbles from the damaged fuel to the building alarms (due to many past similar occurrences); (5) there was no significant release to pose a threat to the public health and safety; and (6) your root cause evaluation and corrective actions taken were thorough.

Your presentation and slides identified the results of your root cause evaluation issues which included: (1) the failure to communicate timely information concerning the failed fuel to the control room; (2) the lack of adequate roles and responsibilities for the fuel handling building activities; and (3) the shift manager's ineffective assessment of plant conditions and delayed response to those conditions. The presentation also included slides of the event timeline, your root cause evaluation, corrective actions, regulatory and radiological considerations.

The NRC acknowledges that: (1) there was no impact on actions to protect public health and safety; (2) actions were taken to protect onsite personnel; (3) there was no significant radiological impact to onsite personnel; and (4) your root cause evaluation appeared to capture the major factors of the event. However, the NRC concludes that your emergency classification system was not properly used during the event. After completing safety actions, as appropriate (i.e., area evacuations and ensuring safe plant conditions), the shift manager did not carry out his continuing responsibilities to review emergency action levels, classify the event, and fulfill the duties of the Emergency Coordinator. Specifically, once the possibility that there was fuel damage was brought to his attention 20 to 30 minutes into the event, the shift manager failed to promptly use the emergency classification scheme as required by the Perry Emergency Plan in accordance with 10 CFR 50.47 (b)(4), and consequently, the event classification was unnecessarily delayed.

With respect to your position that there was no safety significance to this event, the NRC recognizes that the safety significance of this particular event was low. Per the emergency preparedness SDP (during an actual event), significance is based on the event classification level, and whether or not there was a failure to implement a risk significant planning standard. During the time period noted above, the shift manager failed to implement a risk significant planning standard during an Alert condition. The failure to implement a risk significant planning standard is important to safety, since the emergency classification is the trigger for ensuring that emergency response personnel and equipment are quickly in place if it becomes necessary to implement actions to protect the public health and safety. In addition, timely emergency classification allows the state and surrounding counties the time necessary to assess conditions, staff their facilities, and make informed decisions for protecting public safety. Such a finding is considered White in accordance with IMC 0609, Appendix B, and has low to moderate importance to safety.

After considering the information developed during the inspection and at the Regulatory Conference, the NRC has concluded that the inspection finding is appropriately characterized as White (i.e., an issue with low to moderate increased importance to safety, which may require additional NRC inspections).

You have 30 calendar days from the date of this letter to appeal the staff's determination of significance for the identified White finding. Such appeals will be considered to have merit only if they meet the criteria given in NRC Inspection Manual Chapter 0609, Attachment 2.

The NRC has also determined that the failure to properly implement the standard emergency classification and action level scheme resulting in an undue delay in declaring an actual emergency is a violation of 10 CFR 50.47(b)(4), as cited in the enclosed Notice of Violation (Notice). The circumstances surrounding the violation are described in detail in the subject inspection report. In accordance with the NRC Enforcement Policy, NUREG-1600, the Notice of Violation is considered escalated enforcement action because it is associated with a White finding.

Because plant performance for this issue has been determined to be in the regulatory response band, we will use the NRC Action Matrix, to determine the most appropriate NRC response for this event. We will notify you, by separate correspondence, of that determination.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if any, 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>. 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. 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 by Geoffrey Grant Acting for/

James L. Caldwell
Regional Administrator

Docket No. 50-440
License No. NPF-58

Enclosure: 1. Notice of Violation
 2. Licensee Presentation ADAMS Accession #033500224
 3. Regulatory Conference Attendance List

See Attached Distribution

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/RA by Geoffrey Grant Acting for/
 James L. Caldwell
 Regional Administrator

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NAME	FCongel**		BBerson		RCaniano for CPederson		GGrant for JCaldwell	
DATE	01/16/04		01/20/04		01/20/04		01/23/04	

OFFICIAL RECORD COPY

**via e-mail from J. Dixon-Herrity.

W. Kanda

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cc w/encls: G. Leidich, President - FENOC
K. Cimorelli, Acting Director,
Maintenance Department
V. Higaki, Manager, Regulatory Affairs
J. Messina, Director, Nuclear
Services Department
T. Lentz, Director, Nuclear
Engineering Department
T. Rausch, Plant Manager,
Nuclear Power Plant Department
M. O'Reilly, Attorney, First Energy
Public Utilities Commission of Ohio
Ohio State Liaison Officer
R. Owen, Ohio Department of Health

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R. Owen, Ohio Department of Health

ADAMS Distribution:

F. Congel (FJC), Director, Office of Enforcement
D. Dambly (DCD), Assistant General Counsel for Material Litigation and Enforcement, OGC
B. Sheron (BWS), Associate Director for Projects Licensing and Technical Review, NRR
L. B. Marsh (LBM), Director, Division of Licensing Project Management, NRR
R. Franovich (RLF2), Enforcement Coordinator, NRR
D. Weaver (DWW), Region III Coordinator, OEDO
J. Dixon-Herrity (JLD), OE
W. Ruland (WHR), Project Directorate, Division of Licensing Project Management, NRR
S. Sands (SPS1), Perry Project Manager, Project Directorate, Division of Licensing
Project Management, NRR
D. Holody (DJH), Enforcement Coordinator, RI
C. Evans (CFE), Enforcement Coordinator, RII
G. Sanborn (GFS), Enforcement Coordinator, RIV
S. Reynolds (SAR1), Acting Director, Division of Reactor Projects, RIII
P. Hiland (PLH), Deputy Director, Division of Reactor Projects, RIII
C. Pederson (CDP1), Director, Division of Reactor Safety, RIII
R. Caniano (RJC1), Deputy Director, Division of Reactor Safety, RIII
M. Ring, DRP Branch Chief
R. Powell, SRI, Perry
DRS Branch Chiefs (JFL, DEH, RDL, KXR)
B. Clayton (HBC), Enforcement/Investigations Officer, RIII
R. Lickus (RML2), State Liaison Officer, RIII
PMNS
RIII Public Affairs (VTM, RJS2)
J. Kweiser (JRK1), ORA
P. Buckley (PLB1), ORA

NOTICE OF VIOLATION

FirstEnergy Nuclear Operating Company
Perry Nuclear Power Plant

Docket No. 50-440
License No. NPF-58
EA-03-194

During an NRC inspection conducted between August 5, and October 5, 2003, at the Perry Nuclear Power Plant, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.54(q) requires, in part, that a licensee authorized to operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in Section 50.47(b). 10 CFR 50.47(b)(2) requires, in part, that on-shift facility licensee responsibilities for emergency response are unambiguously defined, and adequate staffing to provide initial facility accident response is maintained at all times.

10 CFR 50.47(b)(4) requires, in part, that a standard emergency classification and action level scheme is in use by the nuclear facility licensee.

The Emergency Plan for Perry sets forth, among other things, on-shift facility licensee responsibilities for emergency response (in accordance with 10 CFR 50.47(b)(2)), and delineates the standard emergency classification and action level scheme in use by the licensee (in accordance with 10 CFR 50.47(b)(4)). Section 4.1 of this Emergency Plan states, in part, that the classification system provided in Emergency Plan Instruction EPI-A1, provides for implementation of certain actions applicable to specific indications, and identifies that the Emergency Coordinator shall declare the emergency classification and the actions to be taken.

Emergency Plan Instruction EPI-A1, "Emergency Action Levels," delineates licensee emergency response responsibilities in accordance with 10 CFR 50.47(b)(2), as well as the emergency action level scheme in accordance with 10 CFR 50.47(b)(4). Section 4.0 requires, in part, that the Control Room Shift Supervisor be designated the Emergency Coordinator, classify an Emergency Plan event when actual or potential plant conditions dictate, and ensure required actions are implemented. Section 5.0 requires, in part, that the Emergency Coordinator: (1) place high priority on classification; (2) determine the most appropriate initiating condition based on the operating mode and plant conditions; (3) review emergency action level entry criteria for initiating conditions and determine whether the criteria was met for the operating mode listed; and (4) declare an emergency class when all the conditions listed in at least one emergency action level column have been met, based on the most severe emergency class met. Attachment 2, Initiating Condition GA2 specifies that an Alert emergency action level is met when there is a high alarm on the fuel handling building vent gas radiation monitor from damage to irradiated fuel.

Contrary to the above, on April 24, 2003, the standard emergency classification and action level scheme was not properly used by the operations crew. Specifically, at 11:00 a.m., a condition occurred that warranted an Alert declaration in accordance with EPI-A1 when the end cap separated from a previously damaged fuel pin being inspected and the fuel handling building ventilation gaseous radiation monitor activated

a high alarm in the control room. After the shift manager reviewed emergency plan implementing procedures for emergency action levels at approximately 11:10 a.m., and initiated actions to assure safe plant conditions and fuel handling building and containment evacuations, the shift manager did not then carry out his responsibility as Emergency Coordinator and assess, identify, and classify the event in a timely manner. Even after the report of damaged fuel was received between 11:20 a.m. and 11:30 a.m., there was an undue delay in properly classifying the event and the Alert classification was not made until 11:50 a.m.

This violation is associated with a White Significance Determination Process finding.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance will be achieved is already adequately addressed on the docket in your presentation handout provided during the December 9, 2003 regulatory conference. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," include the EA number, and send it to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response 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>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 23rd day of January 2004

Attendance List

Licensee

D. Bauguess, Emergency Planning Unit Supervisor
V. Higaki, Regulatory Affairs Manager
B. Kanda, Site Vice President
R. Kearney, Plant Operations Manager
M. Laris, Reactor Engineering Supervisor
J. Lausberg, Compliance/Regulatory Affairs Supervisor
L. Myers, Chief Operating Officer
T. Raush, Operations Director
T. Veitch, Shift Manager
T. Lentz, Engineering Director

Nuclear Regulatory Commission

T. Blount, Emergency Preparedness Specialist
R. Caniano, Deputy Director, Division of Reactor Safety
J. Dixon-Herrity, Senior Enforcement Specialist
G. Grant, Deputy Regional Administrator
R. Jickling, Emergency Preparedness Analyst
K. Lambert, Enforcement Specialist
V. Mityng, Public Affairs
R. Powell, Senior Resident Inspector
K. Riemer, Chief, Plant Support Branch, DRS
M. Ring, Chief, Branch 1, DRP
T. Steadham, Resident Inspector