

Guy G. Campbell
Vice President - Nuclear

419-321-8588
Fax: 419-321-8337

Docket Number 50-346

License Number NPF-3

Serial Number 1-1232

February 6, 2001

Mr. James E. Dyer
United States Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, IL 6053204351

Subject: Predecisional Enforcement Conference, November 29, 2000 (Office of Investigations Report No. 3-1999-025), Requested Information and Request for Withholding, Pursuant to 10 CFR 2.790

Dear Mr. Dyer:

During the subject enforcement conference, the Nuclear Regulatory commission (NRC) requested copies of certain material that was referenced by FirstEnergy Nuclear Operating Company (FENOC).

The following documents are enclosed, as requested:

- Davis-Besse February 2, 1999, memorandum
- Davis-Besse June 1, 1999, memorandum
- On-Line Newsletter article, August 2, 1999
- August 2000 Self-Assessment
- Davis-Besse October 9, 2000, letter to employees
- On-Line Newsletter article, October 26, 2000

FENOC requests that the August 2000 Self-Assessment (Davis-Besse document SA-2000-0153) be withheld from public disclosure in its entirety, pursuant to 10 CFR 2.790(b). Document SA-2000-0153 contains confidential information regarding operation of the Davis-Besse Nuclear Power Station. This information would normally be withheld from public disclosure by FENOC.

Further, FENOC is submitting redacted copies of the presentation slides utilized at the subject conference and requests that this information be withheld from public disclosure,

EA-00-183



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pursuant to 10 CFR 2.790, as they contain confidential personnel and commercial information.

If you have any question, feel free to contact David Lockwood at (419) 321-8450.

Sincerely,

A handwritten signature in black ink, appearing to read "David Lockwood". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Lockwood".

Attachments

cc w/enclosure:
R. Caniano, RIII
Office of Enforcement
OAC:RIII
C. H. Weil, RIII

cc w/o enclosures:
H. S. Blanton
G. G. Campbell
R. P. Lessy, Jr.

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Attachment 1
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COMMITMENT LIST

The following list identifies those actions committed to by the Davis-Besse Nuclear Power Station in this document. Any other actions discussed in the submittal represent intended or planned actions by Davis-Besse. They are described only as information and are not regulatory commitments. Please notify the Manager - Regulatory Affairs (419-321-8450) at Davis-Besse of any questions regarding this document or associated regulatory commitments.

COMMITMENTS

DUE DATE

None

N/A

TO All Site Supervisors, Superintendents, Managers, and Directors

DATE February 2, 1999

FROM J. K. Wood, Vice President, Nuclear

MAIL STOP DB3080

SUBJECT NRC Employee Protection Requirements

PHONE 2300

RAS-99-00063

The Nuclear Regulatory Commission (NRC) issued Information Notice 98-04 to remind licensees and their employees of the sanctions that could result from deliberately violating NRC requirements in the area of employee protection. The full text of the Information Notice can be found on the Regulatory Affairs Web Page on the DBWeb (under Other Online Information, NRC Enforcement Information). This memo is being distributed to provide awareness of these regulations (reference CATS Item 1998-0261-01).

Regulations require that no employer discharges or otherwise discriminates against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee engages in certain protected activities. These protected activities include notifying an employer of an alleged violation of the Atomic Energy Act or Energy Reorganization Act, refusing to engage in any practice made unlawful by those Acts, testifying before Congress or in a Federal or State proceeding regarding any provision of these Acts, or commencing, testifying, assisting, or participating in any proceeding under these Acts. Further details regarding these regulations can be found on NRC Form 3, "Notice to Employees," which is prominently posted at various locations throughout the site.

The Information Notice lists several significant Enforcement Actions and sanctions, including an incident involving discrimination by a senior plant management individual. Because of their discrimination against a subordinate engaged in protected activities, the NRC prohibited this individual from engaging in, or exercising control over individuals engaged in NRC-licensed activities for five years, and for the next five years this individual is to notify the NRC prior to engaging in, or exercising control over, NRC-licensed activities. The level of the sanction was related, in part, to the individual's seniority. In addition to the Enforcement Action taken with regards to the individual, the NRC also imposed a \$100,000 civil penalty against the utility.

It is the expectation that all site personnel comply with the Regulations that govern our industry. This is especially true when these regulations are established to ensure nuclear safety is not compromised. Employees must be free to raise potential safety concerns to both station management and to the NRC without fear of reprisal or actual harassment and intimidation. If you have any questions regarding compliance with a Regulation, including those Regulations governing employee protection, you should contact James L. Freels, Manager - Regulatory Affairs, at extension 8466 for guidance.

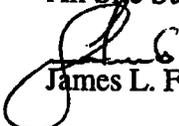
GMW/s

INTRA-COMPANY MEMORANDUM

ED 8268-a



TO All Site Supervisors, Superintendents, Managers, and Directors **DATE** June 1, 1999

FROM  James L. Freels, Manager - Regulatory Affairs **MAIL STOP** DB3065

SUBJECT NRC Employee Protection Requirements and Alleged Violation at the Perry Nuclear Power Plant **PHONE** 8466

RAS 99-00340

On February 2, 1999, the Davis-Besse Nuclear Power Station (DBNPS) Vice President-Nuclear issued a memorandum (RAS-99-00063, copy attached) to site Supervisors, Superintendents, Managers, and Directors regarding Employee Protection Requirements as specified in the Code of Federal Regulations. Since that time, a violation allegedly occurred at the Perry Nuclear Power Plant (PNPP) (copy attached) which warrants reinforcement and reemphasis of Employee Protection Requirements to ensure supervisory and management personnel remain acutely aware of the provisions of these requirements.

Section 211 of the Energy Reorganization Act (ERA), and 10 CFR 19.20, 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10, provide that no employer may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee engaged in certain protected activities. These protected activities include notifying an employer of an alleged violation of the Atomic Energy Act or ERA, refusing to engage in any practice made unlawful by those Acts, testifying before Congress or in a Federal or State proceeding regarding any provision of these Acts, or commencing, testifying, assisting, or participating in any proceeding under these Acts. Licensees and contractors are responsible for ensuring that discrimination does not occur against its employees for engaging in such protected activities. Licensees and contractors who discriminate against their employees for the employees' protected activities are subject to sanctions by the NRC. These sanctions include Notices of Violation and Civil Penalties, and can include prohibiting individuals from engaging in NRC-licensed activities.

The NRC NUREG/BR-0240, Revision 1, "Reporting Safety Concerns" provides information on reporting activities to NRC related to safety (located on the Compliance & Licensing Web Page/Online Documents). From the NUREG, Safety Concerns encompass potential safety issues, violations of NRC requirements, nonconformances with licensee or certificate holder requirements, harassment and intimidation, and a work environment that discourages workers from raising safety concerns. Acts of discrimination by a licensee, contractor, or subcontractor taken against a worker for bringing safety concerns to the attention of licensee management or the NRC are against the law. Specific examples of discrimination include firing, reduction in pay, poor performance appraisals, and reassignment to a lower position or job (if it can be established that these actions were taken by the licensee because a worker raised safety concerns).

RAS 99-00340

June 1, 1999

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On May 20, 1999, the Nuclear Regulatory Commission (NRC) issued a Notice of Violation and Proposed Imposition of a Civil Penalty in the amount of \$110,000 to the FirstEnergy Nuclear Operating Company (FENOC) for an alleged violation involving employee discrimination at the PNPP. Of particular concern to the NRC, as stated in the Notice of Violation, was a FENOC statement in the response to the proposed violation "...that the RPM [Radiation Protection Manager] was unfamiliar with the requirements of 10 CFR 50.7 and that the RPM did not understand what activities were protected under the Regulations." In this particular case, verbal counseling of an employee, who was preparing to testify in a Department of Labor proceeding, by the RPM and the subsequent placement of a memorandum in the employee's file documenting the counseling constitutes the alleged violation involving discrimination. (It should be noted that the PNPP is reviewing this alleged violation and has until June 21, 1999, to respond.)

As stated in the previous memorandum and reemphasized here, it is the expectation that all site personnel comply with the Regulations that govern our industry. This is especially true when these Regulations are established to ensure nuclear safety is not compromised. Employees must be free to raise potential safety concerns to both station management and to the NRC without fear of reprisal or actual harassment and intimidation. If you have any questions regarding compliance with the Regulations, including those Regulations governing employee protection, you should contact Regulatory Affairs for guidance.

RMC/s

Attachments



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

May 20, 1999

EA 99-012

Mr. Lew W. Myers
Vice President - Nuclear
FirstEnergy Nuclear Operating Company
P. O. Box 97, A200
Perry, OH 44081

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$110,000 (NRC Office of Investigations Report Number 3-98-007)**

Dear Mr. Myers:

This refers to the investigation completed by the NRC Office of Investigations (OI) at the Perry Nuclear Power Plant owned by Centerior Energy Corporation (now FirstEnergy Nuclear Operating Company (FENOC)) on December 10, 1998. A summary of the OI report was sent to FENOC on January 26, 1999. The investigation was conducted to determine whether a Radiation Protection Supervisor (RPS) at the Perry facility was discriminated against for providing testimony as a witness in a hearing concerning another employee. Based upon the evidence developed, OI determined that the Perry Radiation Protection Manager (RPM) discriminated against an RPS for engaging in protected activities within the scope of 10 CFR 50.7. The RPS's protected activities pertained to a July 17, 1997, deposition that the RPS was to give in a Department of Labor (DOL) hearing concerning alleged employment discrimination against another individual at the Perry facility. The RPS had previously indicated to Centerior Energy representatives that his testimony would not be favorable to the Centerior Energy Corporation. The discrimination against the RPS consisted of a July 16, 1997, verbal counseling and the placement of a July 17, 1997, memorandum documenting the verbal counseling in the RPS's section personnel file on July 22, 1997. By letter dated January 26, 1999, the NRC invited FENOC to attend a predecisional enforcement conference (PEC). FENOC elected to forego a PEC and, instead, responded to the NRC's findings in writing by letter dated March 10, 1999. The NRC provided a copy of FENOC's response to the RPS who provided a written assessment of FENOC's response to the NRC by letter dated March 30, 1999.

The NRC has determined that a violation of NRC requirements occurred. The violation is described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and involves the failure of FENOC to adhere to the requirements of 10 CFR 50.7, which prohibits discrimination against an employee engaged in protected activities.

This violation is a very significant regulatory concern because it involved employee discrimination by the RPM, a mid-level facility manager, against an employee for testifying in a DOL proceeding. Such testimony is a protected activity in the Commission's employee protection regulations. Furthermore, the sphere of influence of the RPM is broad.

Discrimination committed at this level has the potential to create a chilling effect throughout the Radiation Protection Department and could influence individuals in other plant departments. Therefore, in accordance with NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions (Enforcement Policy)," this violation has been categorized at Severity Level II.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$88,000 is considered for this violation. Because the Perry facility has been the subject of escalated enforcement actions within the last two years¹, 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. *Identification* credit was not warranted because the violation was identified by the NRC. *Corrective Action* credit was not warranted because FENOC has not implemented corrective actions to address the root causes of the violation. For example, FENOC's letter stated, in part, that the RPM was unfamiliar with the requirements of 10 CFR 50.7 and that the RPM did not understand what activities were protected under the regulations. The NRC considers this a potential root cause of this violation for which FENOC has not implemented corrective action. It is disturbing to the NRC that a mid-level manager would not be familiar with the Commission's employee protection regulations. In addition, the NRC takes issue with FENOC's assertion in its letter that no employment action related to compensation, terms, conditions or privileges of employment was ever taken against the supervisor. "Discrimination" as used in employment protection regulations encompass any actions that may affect, or have the potential to affect, an individual's employment. Clearly, verbal counseling and a memorandum documenting such counseling placed in an employee's personnel file have the potential to affect employment and therefore fall within the scope of "discrimination" as defined by 10 CFR 50.7. Since *Identification* and *Corrective Action* credit were not warranted, the civil penalty assessment for the violation was twice the base (\$176,000). However, section VI.B.2 of the Enforcement Policy limits the civil penalty to \$110,000 per day for any one violation.

Therefore, to emphasize the importance of maintaining a safety conscious work environment including permitting employee participation in DOL proceedings without fear of retaliation, I have been authorized after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Regulatory Effectiveness, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$110,000.

¹ Three Severity Level III violations with a \$100,000 civil penalty were violations issued on November 18, 1997, for inadequate corrective actions, technical specification adherence, and the failure to identify an Unreviewed Safety Question (EAs 96-482, 96-542, 97-047, and 97-430). These violations were identified during inspections conducted from December 1996 to August 1997.

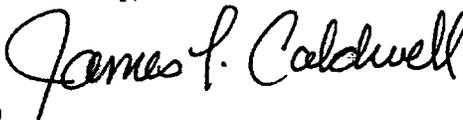
L. Myers

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You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. Your response should document the specific actions taken and any additional actions planned to prevent recurrence, and it should explain why the NRC should have confidence that employees at the Perry facility are free to participate in protected activities without fear of retaliation. The NRC will use your response, in part, to determine whether further NRC 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, its enclosure, and your response will be placed in the NRC Public Document Room.

Sincerely,


J. E. Dyer
Regional Administrator

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

Enclosure: Notice of Violation and
Proposed Imposition of Civil Penalty

cc w/encl: H. Hegrat, Manager, Regulatory Affairs
R. Schrauder, Director, Nuclear
Engineering Department
W. Kanda, General Manager
Nuclear Power Plant Department
N. Bonner, Director, Nuclear
Maintenance Department
H. Bergendahl, Director
Nuclear Services Department
State Liaison Officer, State of Ohio
R. Owen, Ohio Department of Health
C. Glazer, State of Ohio Public
Utilities Commission

**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

**FirstEnergy Nuclear Operating Company
Perry Nuclear Power Plant**

**Docket No. 50-440
License No. NPF-58
EA 99-012**

During an NRC investigation completed on December 10, 1998, a violation of NRC requirements was identified. In accordance with NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions," 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 violation and associated civil penalty is set forth below:

10 CFR 50.7(a), "Employee Protection," in part, prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to the compensation, conditions, terms, or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or Energy Reorganization Act. Protected activities, include but are not limited to, an employee testifying in any Commission proceeding, before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either the Atomic Energy Act or the Energy Reorganization Act of 1974.

Contrary to the above, Centerior Energy Corporation (currently FirstEnergy Nuclear Operating Company) a Commission licensee, through the actions of the Radiation Protection Manager, discriminated against a Radiation Protection Supervisor (RPS), on July 16, 1997, as a result of the RPS engaging in protected activities. The RPS's protected activities consisted of participation in a U.S. Department of Labor (DOL) proceeding. Specifically, the Radiation Protection Manager gave the RPS verbal counseling concerning the deposition he was to provide in the DOL proceeding on July 17, 1997, and placed a memorandum documenting the verbal counseling in the RPS's section personnel file on July 22, 1997. (01012)

**This is a Severity Level II violation (Supplement VII).
Civil Penalty - \$110,000**

Pursuant to the provisions of 10 CFR 2.201, FirstEnergy Nuclear Operating Company (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" and should include for each violation: (1) admission or denial of the 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 to why the

Notice of Violation and
Proposed Imposition of Civil Penalty

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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.

Within the same time as provided for the response required above under 10 CFR 2.201 the Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, 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 errors 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.

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, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: 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 Perry facility.

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

**Notice of Violation and
Proposed Imposition of Civil Penalty**

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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.

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

Dated this 20th day of May 1999

GUY LINES

by Guy Campbell

Having a Questioning Attitude and Our Responsibility to Identify Problems

One of the corner stones of nuclear safety and event free performance is having a questioning attitude. What do we mean when we say we must have a questioning attitude? Good question! A questioning attitude is a continuous behavior of not accepting what we find, see, hear or do, etc., if we have any doubt that it is wrong, incorrect or not in accordance with the standards, polices, procedures and practices that we have established to assure excellence in safety and operational performance. Asking the question: "Is this right or correct?" is fundamental, part of good human performance behavior, and a part of the STAR principle.

Part of demonstrating a questioning attitude is our obligation and accountability to identify all potential or real problems. Identification can come in many forms. We can use the Condition Report process, we can bring issues to our supervision, use the Ombudsman Program or, if those avenues fail, contact our regulator directly. But by all means, we must identify problems or issues when we think we have them.

Recently, I received feedback that some plant personnel have said they would not identify problems because of a real or perceived belief that they may be disciplined as a result of doing so. I want to make our expectations and standards clear for reporting problems at Davis Besse, and explain what the difference is between accountability and discipline.

I expect people to identify problems ... period. Bringing up problems or issues is a protected activity and there is no disciplinary action for identifying problems. There is an accountability that each of us has to identify problems if we are to work in the nuclear industry. To hide a problem, cover-up or not make a problem known is a serious integrity issue that throughout the industry does lead to discipline. We can not tolerate that kind of behavior at Davis Besse; nor will we tolerate an oppressive style that inhibits bringing issues up.

If you recall, one of the issues I saw during my first ninety

days was our inability to consistently hold each other accountable for our performance so that we can continuously improve. The definition of accountable is being "answerable or capable of being explained." Accountability is not punishment or equal to disciplinary action. Holding people accountable is really about doing what we are trained to do correctly or doing what we say we are going to do. It is about meeting the commitment to do our jobs in the very best fashion; and if the outcome or results are not what we expected, wanted or agreed to, we need to understand why. Accountability is about rewards and recognition for doing things right, promoting the right behaviors, and, it is also about understanding the reasons why the outcome was not as expected so that we can learn from it to reinforce the right performance and behavior.

Discipline is a tool used to change behavior. It typically means the other tools (training, event free tools, employee involvement, management oversight/coaching, accountability and job counseling) have been unsuccessful in correcting deficient performance or behavior. However, we are in a high-risk business. Because the consequences of our mistakes can be catastrophic, there must be appropriate consequences. If we can not get the behavior and performance through these other means, we must use discipline, for the protection of all of us, including our families and the public we serve.

We must have a questioning attitude for our long-term survival; and we cannot allow an environment which may suppress problem identification. For Davis-Besse to have continuous improvement, we must be able to hold each other accountable for our performance. I expect all of the Davis-Besse management and leadership team, and all employees, to embrace the fact that problem identification is a fundamental behavior and there is no consequence for individuals who bring up problems.

If you know of instances where we are not living up to these expectations, please contact me with the specifics.

Questions, Comments, and Ideas can be communicated to the On Line staff by electronically mailing LKGriffith or CBWagoner or telephoning 7952 or 8554. Please let us hear from you soon!

