November 27, 2002

IA-02-052

Martin P. McGrath
[Home Address Deleted
Under 10 CFR 2.790(a)]

SUBJECT: NOTICE OF VIOLATION
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-011]

Dear Mr. McGrath:

This refers to information provided to the U.S. Nuclear Regulatory Commission on April 30, 2002, by a representative of First Energy Nuclear Operating Company (FENOC) that you deliberately failed to dispatch a responder to a fire alarm on April 16, 2002, at the Perry Nuclear Power Plant. The NRC Office of Investigations (OI) conducted an investigation of the matter. Information from the OI investigation indicated that you caused FENOC to be in apparent violation of the Perry Plant fire protection procedures and caused you to be in apparent violation of the NRC regulation prohibiting deliberate misconduct, 10 CFR 50.5. The synopsis of the OI report is attached to the enclosed letter to FENOC.

Based on the information developed during the OI investigation, the NRC has concluded that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice). In summary, on April 16, 2002, you were assigned as a Secondary Alarm Station (SAS) operator at FENOC's Perry Nuclear Power Plant. At the time of that assignment, you were aware that several fire alarms, including an alarm in the Fuel Handling Building, were impaired. Later on April 16, 2002, the fire alarm from the Fuel Handling Building, that was on the list of impaired alarms, was received and you deliberately failed to dispatch a first responder to investigate the cause for that alarm. You also deliberately failed to inform the Unit Supervisor that the alarm had been received. Although you knew that alarm was listed as impaired, you also knew that the Perry Plant Fire Emergency Procedure required you to dispatch a first responder and to notify the Unit Supervisor. Fortunately, another employee heard the local alarm, identified the matter, and it was determined that the alarm from the Fuel Handling Building was false. Your actions violated the NRC rule prohibiting deliberate misconduct, 10 CFR 50.5, and has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level IV. Furthermore, you made incomplete and inaccurate statements to your supervisor when questioned about the circumstances of the fire alarm and you attempted to hide a printout of that alarm. Additionally, your actions placed FENOC in violation of the Plant Fire Emergency Procedure (Enclosure 2).

In determining the appropriate sanction to be issued to you in this case, the NRC considered all available enforcement options, including issuing an Order prohibiting your involvement in NRC-licensed activities. After consultation with the Director, Office of Enforcement, and after considering the circumstances of this case, including the facts that: (1) the actual safety significance was low; (2) FENOC removed your access to the Perry Nuclear Power Plant, and (3) FENOC has already terminated your employment, I have decided to issue the enclosed Notice of Violation.

You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or civil action against you.

You are required to respond to this letter and should follow the instructions 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.

Please contact Ronald Gardner, Chief, Electrical Engineering Branch, at telephone number (630) 829-9500, if you have any questions.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html. A copy of this letter and your response with your address removed will be made available to the Public unless you provide a sufficient basis to withdraw this violation within the 30 days specified above for a response to this Notice of Violation.

Sincerely,

/RA/

Cynthia D. Pederson, Director
Division of Reactor Safety

Docket No. 50-440
License No. NPF-58
Enclosures:
1. Notice of Violation
2. 10 CFR 50.5
3. Letter to FENOC
4. Enforcement Policy

*SEE PREVIOUS CONCURRENCE
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NOTICE OF VIOLATION

Martin P. McGrath IA-02-052
[Home Address Deleted
Under 10 CFR 2.790(a)]

During an NRC investigation concluded on September 18, 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 violation is listed below:

10 CFR 50.5(a)(1) provides, in part, that an employee of a licensee may not engage in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

10 CFR 50.5(c) provides, in part, for the purposes of 10 CFR 50.5(a)(1), deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission, or

(2) Constitutes a violation of a requirement, procedure, instruction, or policy of a licensee.

Technical Specification 5.4.1.a for the Perry Nuclear Power Plant requires, in part, that written procedures/instructions shall be established, implemented and maintained covering the applicable procedures recommended in Regulatory Guide 1.33, Revision 2, Appendix A, February 1978. Section 1.l of Regulatory Guide 1.33 recommends that a written administrative procedure for a Plant Fire Protection Program be established, implemented and maintained.

Perry Plant Administrative Procedure (PAP), PAP-1911, Revision 4, June 10, 1992, “Fire Emergency,” provides, in part,

Section 5.10	A probable false alarm is an alarm in which Secondary Alarm Station personnel receive a fire indication and have additional information of some other non fire-related cause for the alarm. Such additional information could consist of known system/equipment problems or system impairments.
Section 6.2.1.4	Secondary Alarm Station personnel react to a probable false alarm by immediately dispatching a first responder to investigate and inform the Unit Supervisor of the situation.

Contrary to the above, on April 16, 2002, while employed by the First Energy Nuclear Operating Company (FENOC) as a Secondary Alarm Station (SAS) operator at the Perry Nuclear Power Plant, you received a probable false fire alarm and you deliberately failed to perform the required actions. Specifically, you received a fire alarm in the Fuel Handling Building and you knew that system/equipment problems and system impairments existed with that alarm.

However, you deliberately failed to immediately dispatch a first responder to investigate and you deliberately failed to inform the Unit Supervisor of the situation.

This is a Severity Level IV violation. (Supplements I and VII)

Pursuant to the provisions of 10 CFR 2.201, Martin P. McGrath is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, marked "Open by Addressee Only," with a copy to the Region III Enforcement Officer at the same address, with a similar marking within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should also be clearly marked as a "Reply to a Notice of Violation; IA-02-052" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) 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 such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because 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, to the extent possible, it 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, 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 27th day of November 2002.

§50.5 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

[56 FR 40690, Aug. 15, 1991]