

May 7, 2004

EA-03-209

Mr. Lew Myers
Chief Operating Officer
FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station
5501 North State Route 2
Oak Harbor, OH 43449-9760

**SUBJECT: DAVIS-BESSE NUCLEAR POWER STATION - NOTICE OF VIOLATION
NRC SPECIAL INSPECTION - COMPLETENESS AND ACCURACY
OF REQUIRED RECORDS AND SUBMITTALS TO THE NRC -
REPORT NO. 50-346/03-19(DRP)**

Dear Mr. Myers:

This refers to the inspection conducted from October 20 through 24, 2003, at the Davis-Besse Nuclear Power Station. The purpose of the inspection was for the NRC to determine whether reasonable confidence exists that important docketed information is complete and accurate in all material respects and that Davis-Besse personnel took appropriate corrective actions to ensure that future regulatory submittals are complete and accurate. During the exit meeting on November 12, 2003, the NRC informed FirstEnergy Nuclear Operating Company (FENOC) of an apparent violation for the failure to provide complete and accurate information in the November 11, 1998, response to NRC Generic Letter (GL) 98-04 regarding protective coating deficiencies and foreign material in containment. FENOC staff had previously identified this issue.

The NRC letter dated January 28, 2004, transmitting Inspection Report 50-346/03-19, provided FENOC the opportunity to address the apparent violation identified in the report before the NRC made its final enforcement decision by either attending a predecisional enforcement conference or by providing a written response. In a letter dated February 27, 2004, FENOC provided a response to the apparent violation.

In its February 27, 2004, letter, FENOC admitted that the violation occurred and described the reasons for the violation, the actions taken to correct the violation and underlying hardware deficiencies, and actions taken to prevent recurrence of the violation. These actions included revising the procedure for regulatory submittals to ensure they are properly validated before submission to the NRC, training employees on the revised procedures and the requirements of 10 CFR 50.9, and submitting a revised response to Generic Letter 98-04. FENOC also stated that it was in full compliance.

The letter also requested that the NRC not issue a civil penalty because FENOC believed credit is warranted for licensee identification and corrective action; the time for issuing civil penalties has exceeded the statute of limitations; and the criteria are met for exercise of discretion in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, Section VII.B.2, "Violations Identified During Extended Shutdowns or Work Stoppages."

Based on the information developed during the inspection and the information that you provided in your February 27, 2004, letter, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and the circumstances surrounding it are described in detail in Inspection Report 50-346/03-19. Specifically, the coatings and debris had the potential to clog the emergency sump screen and affect post accident long-term reactor core cooling and containment atmosphere cooling by the high pressure injection, low pressure injection, and containment spray systems.

This violation is significant because inaccurate information was provided to the NRC regarding significant safety issues at Davis-Besse. Had the issues related to deficient coatings and debris been disclosed in the November 11, 1998, response to GL 98-04, the NRC would have initiated substantial further inquiry. Therefore, this violation has been categorized in accordance with the Enforcement Policy at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$55,000 was considered for a Severity Level III violation that occurred in 1998. To encourage prompt identification and comprehensive correction of violations, Section VI.C.2 of the Enforcement Policy permits mitigation of the base civil penalty if certain criteria are met. Davis-Besse met these criteria as described in FENOC's February 27, 2004, letter. Further, the time frame permitted in the statute of limitations for applying civil sanctions has been exceeded. Therefore, no civil penalty will be proposed.

Section VII.B.2 of the Enforcement Policy permits discretion for the NRC to not issue a Notice of Violation or impose enforcement sanctions if specific criteria are met regarding violations identified during extended shutdowns. As described in FENOC's February 27, 2004, letter, this violation met these criteria. Notwithstanding the provisions of Section VII.B.2, after consultation with the Director, Office of Enforcement, I have decided to issue the enclosed Notice of Violation to emphasize the importance of providing complete and accurate information to the NRC. Significant violations in the future could result in civil penalties.

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 was achieved, is already adequately addressed on the docket in NRC Inspection Report 50-346/03-19, LERs 2003-002 and 2002-005, and licensee letters dated February 27, 2004 (Serial Number 1-1349), November 26, 2003 (Serial Number 2994), and October 24, 2003 (Serial Number 1-1330). Therefore, you are not required to respond to this letter unless the descriptions therein do not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice of Violation.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and 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, 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/

James L. Caldwell
Regional Administrator

Docket No. 50-346
License No. NPF-3

Enclosure: Notice of Violation

cc w/encl: The Honorable Dennis Kucinich
G. Leidich, President - FENOC
J. Hagan, Senior Vice President
Engineering and Services, FENOC
Plant Manager
Manager - Regulatory Affairs
M. O'Reilly, Attorney, FirstEnergy
Ohio State Liaison Officer
R. Owen, Administrator, Ohio Department of Health
Public Utilities Commission of Ohio
President, Board of County Commissioners
of Lucas County
C. Koebel, President, Ottawa County Board of Commissioners
D. Lochbaum, Union Of Concerned Scientists
J. Riccio, Greenpeace
P. Gunter, N.I.R.S.

*SEE PREVIOUS CONCURRENCE

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NOTICE OF VIOLATION

First Energy Nuclear Operating Company
Davis-Besse Nuclear Power Plant, Unit 1

Docket No. 50-346
License No. NPF-3
EA-03-209

During an NRC inspection conducted from October 20 through October 24, 2003, 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 50.9 requires, in part, that information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects. On July 14, 1998, the NRC issued Generic Letter 98-04, "Potential for Degradation of the Emergency Core Cooling System and the Containment Spray System after a Loss-of-Coolant Accident Because of Construction and Protective Coating Deficiencies and Foreign Material in Containment." The licensee's November 11, 1998, letter responding to NRC Generic Letter 98-04 stated:

- a. "The Service Level 1 protective coatings used inside containment at the DBNPS are qualified with the exceptions noted in the response to Item 1."
- b. ". . . large amounts of paint are not likely to be carried to the emergency sump screen and clog over 50 percent of the screen area preventing long-term or containment atmosphere cooling by HPI, LPI, CS or the CACs."
- c. "Any paint debris fragments that are small enough to pass through the 1/4-inch emergency sump intake screen openings would not clog spray nozzles or damage pumps."

Contrary to the above, the licensee failed to provide to the Commission complete and accurate information in its November 11, 1998, response. Specifically:

- a. Unqualified coatings applied to structures, systems, and components located in the containment building were applied to surfaces other than those listed in the exceptions in the response to Item 1. Locations where unqualified coatings not listed as exceptions existed included the reactor vessel, steam generators pressurizer, reactor coolant system piping, and core flood tanks.
- b. Large amounts of paint were likely to be carried to the emergency sump screen and clog over 50 percent of the screen area preventing long-term or containment atmosphere cooling.
- c. Paint debris fragments small enough to pass through the emergency sump screen openings could have damaged the high pressure injection pumps.

This information was material because it affected whether the emergency core cooling system and the containment spray system would perform their safety functions after a postulated loss-of-coolant accident.

This is a Severity Level III violation (Supplement VII).

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 was achieved is already adequately addressed on the docket in NRC Inspection Report 50-346/03-19, LERs 2003-002 and 2002-005, and licensee letters dated February 27, 2004 (Serial Number 1-1349), November 26, 2003 (Serial Number 2994), and October 24, 2003 (Serial Number 1-1330). 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 Davis-Besse facility within 30 days of the date of this letter.

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.

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 7th day of May 2004.