

October 1, 2004

IA-04-022

Franklin D. Peterson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: NOTICE OF VIOLATION AND EXPIRATION OF LICENSE
[OFFICE OF INVESTIGATIONS REPORT NO. 3-2003-031]

Dear Mr. Peterson:

The Nuclear Regulatory Commission (NRC) received a letter dated August 21, 2003, from DTE Energy, informing us that Detroit Edison Company no longer had a need to maintain your operating license for the Fermi 2 facility. We also received a letter dated September 12, 2003, from DTE Energy about the results of a fitness for duty (FFD) test for the prescribed substance, hydrocodone, while working as a licensed reactor operator at the Fermi 2 facility on July 19, 2003. The NRC Office of Investigations (OI) investigated this matter. Information developed during the OI investigation indicated that the hydrocodone was specifically prescribed for a person other than yourself. Therefore, the conclusion reached during the OI investigation was that you willfully took a medication, hydrocodone, that was not prescribed for you. The synopsis of the OI report and copies of each letter from DTE Energy are enclosed. We plan to place both letters from DTE Energy in your 10 CFR Part 55 docket file.

In accordance with 10 CFR 55.55(a), the determination by your facility licensee that you no longer need to maintain a license has caused your license (License No. OP-31226) to expire as of August 25, 2003.¹ In addition, the following violations are being issued on your docket:

- A. 10 CFR 55.53(j) provides, in part, that the licensee shall not use, possess, or sell any illegal drugs. 10 CFR 26.3 defines *illegal drugs* as those drugs in Schedules I through V of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law. Title 21 Code of Federal Regulations, Section 1308 implements the CSA and 21 CFR 1308.12, Schedule II, provides, in part, that hydrocodone is a controlled substance, Controlled Substance No. 9193.

Contrary to the above, on July 19, 2003, you used hydrocodone, a controlled substance under the CSA and listed in 21 CFR 1308.12, Schedule II, as Controlled Substance No. 9193, and your use of hydrocodone was not pursuant to a valid prescription or otherwise authorized by law as the hydrocodone was prescribed for another person.

¹ The expiration of your license was also discussed in our letter to you dated August 28, 2003.

- B. 10 CFR 26.20 requires, in part, that each licensee shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of 10 CFR Part 26.

Fermi 2 General Administration Conduct Manual MGA 10, "Fitness for Duty," implements 10 CFR 26.20. Section 2.3.4 of Fermi 2 Manual MGA 10, Revision 13, June 27, 2002, provides, in part, that employees shall notify their supervisor when using prescription or non-prescription medication and employees shall follow the steps outlined in Section 4.8. Section 4.8 of Fermi 2 Manual MGA 10, Revision 13, provides, in part, that an employee using prescription medication must consult with the employee's personal physician to determine if use of the prescribed medication might affect the employee's ability to safely and effectively perform assigned job duties. Section 4.8 of Manual MGA 10 also provides that the employee must have the original packaging or bottle with warning labels for the medication available for review by a supervisor.

Contrary to the above, on July 19, 2003, you used hydrocodone, a controlled substance that had been prescribed for another individual, and you did not consult with your personal physician to determine if the use of hydrocodone might affect your ability to safely and effectively perform your assigned job duties. Additionally, you did not have the original packaging or bottle with warning labels for the hydrocodone available for review by a supervisor.

This is a Severity Level III problem (Supplement I).

The purpose of the Commission's FFD requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free of drugs and alcohol and the effects of the use of these substances. The NRC recognizes that you may have been injured. However, you willfully took a medication that was not specifically prescribed for you, and the medication, hydrocodone, is listed as a controlled substance under 21 CFR 1308.12, Schedule II. Since the hydrocodone was prescribed for a person other than yourself and is controlled under Federal law, your actions violated the terms and conditions of your NRC reactor operator license. Therefore, the violations are categorized collectively in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) NUREG-1600, as a Severity Level III problem. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**.

Because your license has expired, you are not required to respond to the Notice of Violation at this time **unless you contest the violation**. Should you contest the Notice of Violation, a response is required within 30 days of the date of this letter addressing the specific basis for disputing the violation. This response should be sent to the Regional Administrator and to the Enforcement Officer, NRC Region III, 2443 Warrenville Road, Lisle, IL 60532-4352 and marked, "Open by Addressee Only - Response to a Notice of Violation; IA-04-022."

F. Peterson

The purpose of this letter is to make clear to you the consequences of your violation of NRC requirements governing fitness-for-duty as a licensed operator, in accordance with 10 CFR Part 55. If you reapply for an operating license, you will need to satisfy not only the requirements of 10 CFR 55.31, but also those of 10 CFR 2.201, by addressing the reasons for the violations and the actions you have taken to prevent recurrence in order to ensure your ability and willingness to carry out the special trust and confidence placed in you as a licensed operator and to abide by all fitness-for-duty and other license requirements and conditions.

In accordance with Section 2.390 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 without its enclosures and with other personal privacy information 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. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Should you have any questions concerning this action, please contact Roger Lanksbury, Chief, Operator Licensing Branch, at telephone number (630) 829-9500.

Sincerely,

/RA/

Cynthia D. Pederson, Director
Division of Reactor Safety

Docket No. 55-32664
License No. OP-31226

- Enclosures: 1. 8/21/03 DTE Energy Letter
 2. 9/12/03 DTE Energy Letter (**EXEMPT FROM DISCLOSURE UNDER 10 CFR 2.390(a)(6)**)

cc w/encls: William T. O'Connor, Jr., Vice President
Nuclear Generation, Fermi 2

EXPRESS MAIL

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OFFICE	RIII	E	OI:RIII ²	N	OGC ³	N	OE:D ⁴	N	RIII	N	RIII	N
NAME	Weil		Paul		Cameron		Congel		Clayton		Pederson	
DATE	09/28/04		11/ /04		09/23/04		09/23/04		9/29/04		10/1/04	

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² Approval to release OI report synopsis.

³ No legal objection received from G. Longo, OGC, on September 23, 2004.

⁴ Concurrence received from C. Nolan, OE, on September 23, 2004.

**ENCLOSURES ARE NOT TO BE RELEASED WITHOUT THE APPROVAL OF THE
DIRECTOR, OFFICE OF ENFORCEMENT.**

F. Peterson

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NRC Distribution (ADAMS Sensitive with Enclosures): **45 day delay for ADAMS entry**

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SYNOPSIS

This investigation was initiated on October 27, 2003, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if a Reactor Operator at the Fermi 2 Energy Center violated the fitness for duty (FFD) requirements. The investigation was also initiated to determine if the Senior Reactor Operator and/or the Reactor Operator willfully failed to provide complete and accurate information regarding this incident.

Based on the evidence developed, this investigation did substantiate the allegation that the Reactor Operator willfully violated the FFD requirements. Based on the evidence developed, this investigation did not substantiate the allegation that the Senior Reactor Operator and/or the Reactor Operator deliberately failed to provide complete and accurate information regarding this incident.