

February 18, 2005  
EN-05-004

OFFICE OF ENFORCEMENT  
NOTIFICATION OF SIGNIFICANT ENFORCEMENT ACTION

Licensee: FirstEnergy Nuclear Operating Company (EA-01-083) (EA-04-172)  
Perry Nuclear Power Plant and (EA-01-082) (EA-01-091)  
Davis-Besse Power Plant (EA-04-224)  
Docket Nos. 50-440 and 50-346

Subject: PROPOSED IMPOSITION OF CIVIL PENALTY - \$55,000

This is to inform the Commission that a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty (CP) in the amount of \$55,000 will be issued on or about February 24, 2005, to FirstEnergy Nuclear Operating Company (FENOC). This action is based on a Severity Level III violation of 10 CFR 50.7, "Employee protection," in March 2000, involving Williams Power Corporation (Williams Power), a contractor at the Perry Nuclear Power Plant (Perry) which discriminated against painters employed by Williams Power at Perry. In accordance with the Enforcement Policy, the base civil penalty amount for a Severity Level III violation in March 2000, was \$55,000. Because Perry was the subject of an escalated enforcement action within the two years preceding the violation, the staff assessed the civil penalty adjustment factors for *Identification* and *Corrective Action*. Credit is not warranted CP adjustment factor for *Identification* because the violation was identified by the NRC staff. Credit is warranted for the *Corrective Action* CP adjustment factor. In addition to the above NOV and CP issued to FENOC, Williams Power will be issued a SL III NOV for violation of 10 CFR 50.7. The former Site Superintendent for Williams Power at Perry will be issued an Order prohibiting involvement in NRC-licensed activities for a period of three years for deliberately providing materially inaccurate information to the NRC during an NRC Office of Investigations (OI) interview and during a predecisional enforcement conference (PEC). Staff action on this issue was delayed while the Department of Justice prosecuted the former Williams Power Site Superintendent on charges of false or fraudulent statements. The individual received probation and community service.

Separately, the NRC staff will be issuing a letter to FENOC requesting their attendance at a PEC to discuss potential violations of 10 CFR 50.7 by its food service contractor at Davis-Besse. OI investigations completed on September 9, 2004, and October 26, 2004, concluded that two food service managers threatened employees with termination if they raised certain fitness for duty issues to the licensee.

It should be noted that the licensee has not been specifically informed of the enforcement action. The schedule of issuance and notification is:

Mailing of Notice	February 24, 2005
Telephone Notification of Licensee	February 24, 2005

The State of Ohio will be notified.

The licensee has thirty days from the date of the Notice in which to respond. Following NRC evaluation of the response, the civil penalty may be remitted, mitigated, or imposed by Order.

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OE

D. Starkey

C. Nolan

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**PRELIMINARY INFORMATION - NOT FOR PUBLIC DISCLOSURE UNTIL  
VERIFICATION THAT LICENSEE HAS RECEIVED ACTION**