

March 29, 2005

EA-04-214

Mr. R. Anderson
Vice President
FirstEnergy Nuclear Operating Company
Perry Nuclear Power Plant
P. O. Box 97, A290
10 Center Road
Perry, OH 44081

SUBJECT: PERRY NUCLEAR POWER PLANT
FINAL SIGNIFICANCE DETERMINATION FOR A WHITE FINDING
AND NOTICE OF VIOLATION (NRC INSPECTION REPORT
NO. 05000440/2005007(DRS))

Dear Mr. Anderson:

The purpose of this letter is to provide you with the final results of our significance determination of the preliminary White finding identified in Inspection Report No. 05000440/2004016(DRS). The inspection finding was assessed using the significance determination process and was preliminarily characterized as White (i.e., a finding with low to moderate increased importance to safety, which may require additional NRC inspections). This preliminary White finding concerned the failure to follow the requirements of the Perry Emergency Plan during an event which was classified at the Alert level on July 20, 2004.

The finding involved a failure to conduct an emergency dose assessment within 15 minutes of your classifying the event at the Alert level as required by your Emergency Plan on July 20, 2004. This finding was preliminarily classified as White because it involved a failure to implement a risk significant planning standard. This preliminary White finding was associated with an apparent violation of 10 CFR 50.47, "Emergency Plans."

In our letter dated December 23, 2004, transmitting the inspection report, we provided FirstEnergy Nuclear Operating Company (FENOC) an opportunity to request a Regulatory Conference or provide a written response. You declined the opportunity to discuss this issue in a Regulatory Conference and instead on January 26, 2005, provided a written response to our December 23, 2004, letter. A copy of the written response you provided to the NRC has been entered in the NRC's document system (ADAMS) and is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, ADAMS Accession Number ML050460286.

In your letter, you disagreed with the NRC's preliminary assessment of the violation and application of the significance determination process, and provided additional information that you requested the NRC use to re-evaluate the significance of the violation. The attachment to

your letter provided a timeline of events describing the Shift Manager's (Emergency Coordinator) actions to assess both the event and the potential for escalating the emergency classification level. The attachment to your letter also provided an outline of FENOC's position regarding performance deficiencies and the significance of those performance deficiencies. Specifically, your letter stated that you believed the events resulted in the identification of two performance issues: (1) the Emergency Action Level HA1 note was not clear; and (2) the Shift Manager failed to direct a Computer Aided Dose Assessment Program (CADAP) run within 15 minutes of classifying the event at the Alert level. Your letter also stated that neither of these performance issues resulted in a failure to implement the Emergency Action Levels or the Emergency Plan and that neither of these performance issues had an impact or a potential impact on the health and safety of the general public. As a result, you concluded that the performance deficiencies did not rise to the level of a White finding.

We have reviewed the information you provided relative to the timeline of events, and your position that the Shift Manager monitored plant indications and survey results during the event in order to assess actual plant conditions and to determine if an escalation of the event was required. We determined that the Shift Manager did not direct the performance of the CADAP run within 15 minutes of the initial classification of the event at the Alert level, a fact acknowledged in your January 26, 2005, letter. You also stated that the plant staff questioned the appropriateness of the Emergency Action Level note directing the Shift Manager to have a CADAP run completed since, according to Perry Nuclear Power Plant procedure development guidance, actions are not to be contained within notes. Notwithstanding the potential conflict between the Emergency Plan Emergency Action Level note and the lower tier procedure development guidance, the Perry Emergency Plan, as a part of the station's license, must be implemented as written and approved.

With respect to your position that there was no safety significance to this event, we acknowledge that the actual safety significance of this particular event was low. However, the NRC Significance Determination Process (SDP) defines the significance of an actual event based upon the declared emergency classification level and your success in implementing the risk significant planning standards. During the time period noted above, the Shift Manager failed to implement a risk significant planning standard during an event classified at the Alert level. The failure to implement a risk significant planning standard is important to safety since the emergency classification is the trigger for ensuring that emergency response personnel and equipment are prepared to implement actions to protect the public health and safety. Such a finding is considered White in accordance with Inspection Manual Chapter (IMC) 0609, Appendix B, and has low to moderate importance to safety.

After considering the information developed during the inspection and the additional information provided in your January 26, 2005, letter, the NRC has concluded that the inspection finding is appropriately characterized as White (i.e., an issue with low to moderate increased importance to safety, which may require additional NRC inspections).

You have 30 calendar days from the date of this letter to appeal the staff's determination of significance for the identified White finding. Such appeals will be considered to have merit only if they meet the criteria given in NRC Inspection Manual Chapter 0609, Attachment 2.

The NRC has also determined that the failure to properly implement the standard emergency classification and action level scheme is a violation of 10 CFR 50.47(b)(4), as cited in the enclosed Notice of Violation (Notice). The circumstances surrounding the violation are described in detail in NRC Inspection Report No. 05000440/2004016(DRS). In accordance with the NRC Enforcement Policy, NUREG-1600, the Notice of Violation is considered escalated enforcement action because it is associated with a White finding.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response.

Because plant performance has been determined to be in the Multiple/Repetitive Degraded Cornerstone Column, we will use the NRC Action Matrix to determine the most appropriate NRC response for this event. We will notify you of that determination by separate correspondence.

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 by Mark Satorius Acting for/

James L. Caldwell
Regional Administrator

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

Enclosures: 1. Notice of Violation
2. Licensee Response ADAMS Accession #ML050460286

cc w/encls: G. Leidich, President - FENOC
L. Myers, Chief Operating Officer, FENOC
J. Hagan, Senior Vice President Engineering and Services, FENOC
Director, Site Operations
Director, Regulatory Affairs
W. O'Malley, Manager, Maintenance Department
Manager, Regulatory Compliance
J. Messina, Director, Performance Improvement
T. Lentz, Director, Nuclear Engineering Department
F. Von Ahn, Plant Manager,
Nuclear Power Plant Department
D. Jenkins, Attorney, First Energy
Public Utilities Commission of Ohio
Ohio State Liaison Officer
R. Owen, Ohio Department of Health

ADAMS Distribution:

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L. Trocine, (LXT), OE
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S. Sands (SPS1), Perry Project Manager, Project Directorate, Division of Licensing
Project Management, NRR
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M. Satorius (MAS), Director, Division of Reactor Projects, RIII
S. Reynolds (SAR1), Deputy Director, Division of Reactor Projects, RIII
C. Pederson (CDP1), Director, Division of Reactor Safety, RIII
R. Caniano (RJC1), Deputy Director, Division of Reactor Safety, RIII
M. Ring, DRP Branch Chief
R. Powell, SRI, Perry
DRS Branch Chiefs (JFL, DEH, RDL, KXR, AMS1)
K. O'Brien (KGO), Enforcement/Investigations Officer, RIII
R. Lickus (RML2), State Liaison Officer, RIII
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***See Previous Concurrence**

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DATE	03/16/05		03/16/05		03/08/05		03/17/05	
OFFICE	RIII *		NSIR	E	OE	E	RIII	
NAME	SReynolds		RKahler		FCongel (MCN for)		KO'Brien	JCaldwell
DATE	03/18/05		03/23/05		03/24/05		03/21/05	03/29/05

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NOTICE OF VIOLATION

FirstEnergy Nuclear Operating Company
Perry Nuclear Power Plant

Docket No. 50-440
License No. NPF-58
EA-04-214

During an NRC inspection conducted between October 4 and November 19, 2004, at the Perry Nuclear Power Plant, 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:

Title 10 CFR 50.54(q) requires, in part, that a licensee authorized to operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in Section 50.47(b). Title 10 CFR 50.47(b)(4) requires, in part, that a standard emergency classification and action level scheme is in use by the nuclear facility licensee.

The Perry Nuclear Power Plant Emergency Plan, Section 4.0, provided an emergency classification system which includes Emergency Action Levels. Emergency Action Level (EAL) HA1 required, in part, that when entered, an emergency dose assessment run using the appropriate source term, determined at the time of the event, must be performed within 15 minutes concurrently with Offsite Dose Calculation Manual (ODCM) calculations to determine if Site Area Emergency entry criteria have been met.

Contrary to the above, on July 20, 2004, the First Energy Nuclear Operating Company, a licensee authorized to operate the Perry Nuclear Plant, failed to implement the emergency classification system and emergency action levels described in Section 4.0 of the Perry Power Plant Emergency Plan. Specifically, the licensee did not conduct the emergency dose assessment required by EAL HA1 within 15 minutes of its classification of the event as an Alert at 3:44 a.m. on July 20, 2004. The licensee completed the emergency dose assessment at 6:24 a.m., 2 hours and 40 minutes after the Alert declaration. As a result, the licensee failed to meet the requirements of their emergency plan during a declared Alert.

This violation is associated with a White Significance Determination Process finding.

Pursuant to the provisions of 10 CFR 2.201, First Energy Nuclear Operating Company is hereby required to submit a written statement or explanation 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 facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-04-214," and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (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. Your response may reference or include previous docketed correspondence if the correspondence adequately addresses the required response. 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 license should not be modified, suspended, or revoked or 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, U.S. 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 2.390(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 2 working days.

Dated this 29th day of March 2005