

December 19, 2006

IA-06-045

Mr. James Hesler Jr.  
**HOME ADDRESS DELETED**  
**UNDER 10 CFR 2.390**

SUBJECT: NOTICE OF VIOLATION  
(NRC Investigation Report No. 1-2005-036)

Dear Mr. Hesler:

This letter is in reference to the investigation conducted by the NRC Office of Investigations (OI) on August 31, 2005 to May 9, 2006, regarding certain of your activities while employed as a contract mechanical engineer at the FirstEnergy Nuclear Operating Company's (FENOC) Beaver Valley Power Station (BVPS). The OI investigation was initiated after FENOC informed the NRC that you had not completed required work for an Engineering Change Package (ECP) for the replacement reactor vessel closure head. Specifically, FENOC revealed to the NRC that you had not attached all the required Design Interface Evaluations (DIEs) with the ECP, yet you signed the ECP indicating that the DIEs were completed. FENOC identified this about 2 weeks after you signed the ECP. FENOC subsequently corrected the record by reissuing the ECP prior to its use to replace the reactor vessel head about eight months later.

The OI investigation confirmed the information provided to NRC from FENOC, and also found that your actions were deliberate. As a result, in a letter we sent you on July 31, 2006, which contained a factual summary of the investigation report, we informed you that based on the OI investigation, the NRC concluded that you were in apparent violation of 10 CFR 50.5, "Deliberate Misconduct," in that you deliberately caused FENOC to be in violation of NRC requirements. Our letter also informed you that the NRC was considering escalated enforcement action against you in accordance with its enforcement policy, and you were provided an opportunity to either respond in writing to this apparent violation, attend a predecisional enforcement conference, or request Alternate Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue.

You provided a written response to the NRC letter on August 28, 2006. In your response, you indicated that you accept full responsibility for what occurred as described in the NRC July 31, 2006 letter. You also indicated that you are an experienced engineer in the nuclear power industry and now realize that you made a serious error. Further, you noted that you no longer provide services to FENOC, and that you were unable to gain employment within the nuclear power industry for about one year after this occurrence.

Based on the information developed during the investigation, and our consideration of the information that you provided in your written response dated August 28, 2006, the NRC concluded that you deliberately placed FENOC in violation of NRC requirements, and, as such, you violated 10 CFR 50.5, "Deliberate Misconduct." Specifically, on June 1, 2005, you, as the designated responsible engineer for preparation of the replacement reactor vessel closure head

ECP at the FENOC BVPS, Unit 1 facility, deliberately failed to adhere to procedures when you signed ECP No. 03-0541-01 even though it was not complete. The ECP was not complete in that the majority of the DIEs, required to be included in the package pursuant to 10 CFR 50, Appendix B, Criterion III, as well as associated FENOC design control implementing procedures, were not included. FENOC Procedure NOP-CC-2004, Revision 2, April 26, 2004, "Design Interface Reviews and Evaluations," was not adhered to in that you, as the responsible engineer, did not assemble the final package and did not file the DIEs. Also, FENOC Procedure NOP-CC-2003, Revision 6, April 11, 2005, "Engineering Changes," was not adhered to in that you, as the responsible engineer, did not develop the ECP in accordance with the procedure. As a result, FENOC violated 10 CFR 50, Appendix B, Criterion III. The violation is cited in the enclosed Notice of Violation (Notice) (Enclosure 1). Enclosure 2 is a copy of the enforcement action taken against FENOC.

Deliberate violations are a very serious concern to the NRC because the NRC regulatory program relies, in part, on the honesty and integrity of NRC licensees and their employees. The violation resulted in no actual safety consequences at BVPS because the licensee subsequently re-worked the ECP to ensure it included all of the DIEs several months prior to it being relied upon to install the new reactor vessel head. Nonetheless, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III because the violation was deliberate, and you were the engineer responsible for the project.

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. However, after consultation with the Director, Office of Enforcement, and after considering the circumstances of this case, I have decided that issuance of an Order is not warranted in this case given that (1) there was no actual safety consequence, since the licensee identified this problem prior to reliance upon the incomplete record, (2) you were not functioning as a supervisor at the time of your actions, (3) there was some management culpability, in that the engineering supervisor did not identify during his review that the ECP you signed did not contain all of the DIEs, and (4) disciplinary action was taken against you by FENOC. However, due to your deliberate misconduct in creating an incomplete record, the NRC has determined that a Notice of Violation is warranted in this case.

You should be aware that any similar actions in the future involving NRC-licensed activities, whether identified by your employer, or by the NRC during an inspection or investigation, could result in the NRC taking more significant enforcement action against you and potential criminal prosecution.

The NRC noted in your August 28, 2006, letter, that while you accepted full responsibility for the apparent violation, you did not provide information regarding the corrective actions you have taken or you plan to take to assure no similar violations in the future. Therefore, you are required to respond to this violation and you should follow the instructions specified in the enclosed Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

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. Alternatively, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. If you request ADR with the NRC in an attempt to resolve this issue, you

Mr. James Hesler Jr.

3

will need to contact the Institute on Conflict Resolution (ICR) at 877-733-9415 within 10 days of the date of this letter. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program, which is now in effect, is mediation. Additional information concerning the NRC's pilot program is described in the brochure (NUREG/BR-0317) that was provided to you in our July 31, 2006 letter, and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The ICR at Cornell University has agreed to facilitate the NRC's program as an intake neutral.

This letter will be maintained by the Office of Enforcement (OE) in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

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, its enclosures, your response to this letter, and our July 31, 2006, letter, as well as your August 28, 2006 response to that letter, will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of ADAMS. The NRC will also include this letter on its Web site for a period of 1 year at [www.nrc.gov](http://www.nrc.gov); select **What We Do, Enforcement, then Significant Enforcement Actions**.

If you have any questions or comments concerning this letter, please contact Mr. Ronald Bellamy of my staff at 610-337-5200.

Sincerely,

*/RA/*

Samuel J. Collins,  
Regional Administrator

Enclosures: 1. Notice of Violation  
2. Letter to FENOC with Notice of Violation

Mr. James Hesler Jr.

4

cc w/encls:

Commonwealth of Pennsylvania

State of Ohio

State of West Virginia

Mr. James H. Lash, Site Vice President, FENOC, Beaver Valley Power Station

DISTRIBUTION w/encl:

ADAMS (PARS)	R1DRP_Mail
SECY	JDyer, NRR
CA	MWeber, NRR
OEMAIL	BBoger, NRR
OEWEB	RLauffer, NRR
LReyes, EDO	TColburn, NRR
WKane, DEDR	BSosa, OEDO
SCollins, RA	Enforcement Coordinators RII, RIII, RIV
MDapas, DRA	BHaydon, OPA
CCarpenter, OE	HBell, OIG
MJohnson, OE	GCaputo, OI
LLopez, OE	LTremper, OC
OSamuel, OE	DScrenci/NSheehan, RI
LChandler, OGC	PCataldo, NRC Resident Inspector
LTrocine, OE	RBellamy, RI
BJones, OGC	KFarrar, RI
MElwood, OGC	DHolody, RI
MBaty, OGC	RSummers, RI
JSchlueter, OSTP	Region I OE Files (with concurrences)

**DO NOT PLACE IN PDR UNTIL THE NOTICE OF VIOLATION AN ORDER TO FENOC ARE ISSUED.**

**SISP Review Complete: \_\_\_\_\_ RJS \_\_\_\_\_ (Reviewer's Initials)**

DOCUMENT NAME: C:\FileNet\ML063530481.wpd

After declaring this document "An Official Agency Record" it **WILL** be released to the Public

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	RI/ORA		RI/OI		RI/DRP		RI/DRP		RI/ORA	
NAME	RSummers*		JTeator*		RBellamy*		BHolian*		KFarrar*	
DATE	10/ 31 /06		11/ 07 /06		11/ 02 /06		11/ 06 /06		11/ 08 /06	
OFFICE	RI/ORA		HQ/OGC		HQ/OE				RI/ORA	
NAME	DHolody*		NLO by BJones**		DSolorio**				SCollins	
DATE	11/ 09 /06		12/ 07 /06		12/ 01 /06				12/08 /06	

OFFICIAL RECORD COPY

\* see prior concurrence sheet

\*\* email concurrence from L. Trocine on 12/07/2006

Enclosure 1

NOTICE OF VIOLATION

Mr James Hesler Jr.

IA-06-045

During an investigation by the NRC Office of Investigations completed on May 9, 2006, at the FirstEnergy Nuclear Operating Company (FENOC) Beaver Valley Power Station located in Shippingport, Pennsylvania, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 50.5, "Deliberate Misconduct" requires, in part, any licensee, employee of a licensee, or any contractor or subcontractor, employee of a contractor or subcontractor of any licensee who knowingly provides to any licensee goods or services that relate to a licensee's activities may not: (1) 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; or (2) deliberately submit to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

10 CFR 50 Appendix B Criterion III, "Design Control," requires, in part, that measures shall be established for the identification and control of design interfaces and for the coordination among participating design organizations for the review, approval, release, distribution, and revision of documents involving design interfaces. The verifying or checking process shall be performed by individuals or groups other than those who performed the original design.

FENOC Procedure NOP-CC-2004, Revision 2, April 26, 2004, "Design Interface Reviews and Evaluations," requires, in part, that Design Interface Evaluations be performed and retained as quality documents.

FENOC Procedure NOP-CC-2003, Revision 6, April 11, 2005, "Engineering Changes," requires, in part, that Design Interface Evaluations be included in the Engineering Change Package; that the Engineering Change Package be retained as a quality document; and, that the responsible engineer sign the Engineering Change Package cover sheet after assembly of the final package including interface with appropriate disciplines to ensure that comments are incorporated correctly, and process the package for review and approval.

Contrary to the above, on June 1, 2005, you, as the responsible engineer for preparation of the Replacement Reactor Vessel Closure Head Engineering Change Package (ECP) at the FENOC Beaver Valley Power Station Unit 1 facility, deliberately failed to adhere to procedural requirements when you signed ECP No. 03-0541-01 even though it was not complete. Specifically, the ECP was not complete in that the majority of design interface evaluations (DIEs), required to be included in the package pursuant to 10 CFR 50, Appendix B, Criterion III and associated FENOC design control implementing procedures, were not included. Your deliberate actions (1) caused FENOC to be in violation of regulation 10 CFR 50, Appendix B, Criterion III, "Design Control;" and, (2) involved submitting an incomplete record (ECP No. 03-0541-01) to the

licensee, even though you knew it to be incomplete in some respect material to the NRC.

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

Pursuant to the provisions of 10 CFR 2.201, Mr. James Hesler Jr. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 475 Allendale Road, King of Prussia, PA 19406, and marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation; IA-06-045" and should include: (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 2.390(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. This letter will be maintained by the Office of Enforcement (OE) in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated this 19th day of December 2006