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March 9, 2007

Mr. James L. Caldwell
Administrator
United States Nuclear Regulatory Commission
Region III
2443 Warrensville Road, Suite 210
Lisle, Illinois 60532-4352

Dear Mr. Caldwell:

The Subcommittee on Domestic Policy has concerns about FirstEnergy Nuclear Operating Company's (FENOC) request to be relieved from independent oversight mandated by the Nuclear Regulatory Commission (NRC) after a near catastrophe at the Davis-Besse Nuclear facility.

As you know, NRC requires that FENOC submit to independent assessments of its operations performance. This requirement followed NRC's investigation into FirstEnergy's efforts to deceive the government about safety violations at the Davis-Besse facility. Those violations resulted in a football-sized crater in the reactor vessel. FirstEnergy's mismanagement and efforts to evade its detection nearly resulted in a disaster at the plant. Only a slim steel liner stood in the way of radioactive release into the air, which would have jeopardized the safety of millions of residents of in the state of Ohio.

A strong argument was made to require Davis-Besse to cease operations. However, the NRC instead chose to allow FirstEnergy to continue operations, contingent upon the company's adopting a new safety focus with full and accurate reporting of operating problems. NRC mandated that FirstEnergy submit to an independent assessment for five years.

Only two years into the new operating agreement with NRC, FirstEnergy is now seeking to be relieved from independent assessment of its operations.

As you know, the NRC has the ability to relax the Davis Besse confirmatory order "upon demonstration by the licensee of good cause." The FirstEnergy safety record from the past four years since the near catastrophe at Davis-Besse suggests that FirstEnergy not only failed to

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demonstrate "good cause," but has clearly demonstrated the need for more rigorous oversight, not less. To underscore this, I have attached for your review a series of NRC reports that highlight a continuing pattern of deception by FirstEnergy.

The NRC Office of Investigations in August of 2006 concluded that FirstEnergy falsified records at their Beaver Valley nuclear plant (Attachment 1). The records in question were for the replacement of the reactor vessel head, the repair that Davis-Besse was forced to do after FirstEnergy allowed the original to deteriorate to the point of failure. This August 2006 incident is not an isolated misstep.

For example:

- September 26, 2002: The NRC Office of Investigations concluded that application for access was falsified at Perry (Attachment 2).
- October 6, 2003: The NRC Office of Investigations concluded that overtime records were deliberately falsified at Perry so as to appear to comply with technical specifications (Attachment 3).
- April 1, 2004: The NRC informed FirstEnergy that it found "creative timekeeping" at Perry (Attachment 4).
- November 4, 2004: The NRC issues White finding to FirstEnergy for "creative accounting" of the emergency alert and notification system testing at Davis-Besse (Attachment 5).

I request that NRC brief the subcommittee on this matter and contact Jaron Bourke, Staff Director, at (202) 225-6427 to arrange a suitable time.

Sincerely,



Dennis J. Kucinich
Chairman,
Subcommittee on Domestic Policy

DJK:ap

Attachment 1

August 1, 2006

EA-06-152

Mr. James H. Lash
Site Vice President
FirstEnergy Nuclear Operating Company
Beaver Valley Power Station
Post Office Box 4
Shippingport, Pennsylvania 15077

SUBJECT: BEAVER VALLEY POWER STATION - NRC OFFICE OF INVESTIGATIONS
REPORT NO. 1-2005-036

Dear Mr. Lash:

This letter refers to information provided by your staff at the FirstEnergy Nuclear Operating Company (FENOC) Beaver Valley Power Station (BVPS) on June 16, 2005, which indicated that a contract engineer provided false information to BVPS. Specifically, you informed the NRC that while placing an approved engineering change package (ECP) into your records system, a clerk identified that certain materials, including required Design Interface Evaluations (DIEs), were missing. You commenced an immediate review and determined that a contract engineer had not completed the required work for ECP 03-541, the Replacement Reactor Vessel Closure Head Project (RRVCHP), yet indicated by signature on the ECP that all work had been completed as required. As a result, the NRC Office of Investigations (OI), Region I, initiated an investigation on August 31, 2005, into the circumstances surrounding this matter.

Based on the results of the OI investigation, one apparent violation was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. Specifically, the OI investigation results indicated that the contract engineer deliberately provided false information to Beaver Valley which, if not discovered, would have resulted in a violation of 10 CFR 50 Appendix B, Criterion III. The false information involved signing ECP 03-541 as complete when it was not. Even though this falsification was identified and corrected prior to implementation of the design change, this act constitutes an apparent violation of 10 CFR 50.9, "Completeness and Accuracy of Information."

Based on the OI investigation results, the NRC concludes that the action of the former contract engineer was deliberate because he knew that the Design Interface Evaluations (DIEs), as well as other technical information, were required to be completed before he signed ECP 03-541, certifying the package was complete and ready for management approval. While the NRC staff noted that Beaver Valley subsequently identified this issue, BVPS's Quality Assurance Program reviews, a 10 CFR 50.59 review, and management's review and approval of the ECP all failed to identify that the package was incomplete. BVPS also failed to provide the proper level of

oversight and monitoring of the contract employee resulting in an additional missed opportunity to identify and correct this issue prior to it resulting in the apparent violation. A summary of the OI report is enclosed.

We believe that we have sufficient information to make our final enforcement decision for this matter. However, before the NRC makes a final decision, we are providing you an opportunity to either: (1) respond to the apparent violation within 30 days of the date of this letter; (2) request a predecisional enforcement conference (PEC) within 10 days of the date of this letter; or (3) request Alternative Dispute Resolution (ADR) within 10 days of the date of this letter. Please contact Mr. Ronald Bellamy at 610-337-5200 within 10 days of the date of this letter to notify the NRC of your intended response. In addition, to assist NRC in its final enforcement decision, if you choose to reply or if you request a predecisional enforcement conference, we request that FENOC provide the NRC with a copy of any evaluations performed and actions taken by FENOC related to the contract engineer's trustworthiness, site access, and information entries into the PADS database, if any, following FENOC's discovery of this issue.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation in OI Report 1-2005-036; EA-06-152" and should include: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent 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. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

If you request a PEC, it will be held at our office in King of Prussia, PA. Since the PEC will be based on the findings of an OI investigation, it will not be open for public observation, but will be transcribed. The purpose of the PEC is to discuss the apparent violation and the circumstances surrounding it, and to give FENOC an opportunity to provide its perspective on this issue and any other information that FENOC believes is relevant to the NRC's enforcement determination. If a conference is held, the NRC will issue a press release to announce the conference and the fact that it is closed to public observation.

Instead of a written response or a predecisional enforcement conference for the apparent violation of 10 CFR 50.9, you may request ADR with the NRC in an attempt to resolve this issue. 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 enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In addition, please be advised that the number and characterization of apparent violations described herein may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

Mr. James H. Lash

3

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (if you choose to provide one) 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.

Sincerely,

/RA/

Brian E. Holian, Director
Division of Reactor Projects

Docket Nos. 50-334, 50-412
License Nos. DPR-66, NPF-73

Enclosures:

1. Summary of OI Report 1-2005-036
2. NUREG/BR-0317

cc w/encl 1:

G. Leidich, President and Chief Nuclear Officer
J. Hagan, Senior Vice President of Operations and Chief Operating Officer
D. Pace, Senior Vice President, Fleet Engineering
J. Rinckel, Vice President, Fleet Oversight
L. Myers, Executive Vice President, Special Projects
R. Anderson, Vice President, FirstEnergy Nuclear Operating Company
Manager, Fleet Licensing, FirstEnergy Nuclear Operating Company
R. Mende, Director, Site Operations
T. Cosgrove, Director, Maintenance
P. Sena, Director, Engineering
L. Freeland, Director, Site Performance Improvement and Manager, Regulatory Compliance
D. Jenkins, Attorney, FENOC
B. Sepelak, Supervisor, Nuclear Compliance
M. Clancy, Mayor, Shippingport, PA
D. Allard, PADEP
C. O'Claire, State Liaison to the NRC, State of Ohio
Z. Clayton, EPA-DERR, State of Ohio
Director, Utilities Department, Public Utilities Commission, State of Ohio
D. Hill, Chief, Radiological Health Program, State of West Virginia
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W. Hill, Beaver County Emergency Management Agency
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Mr. James H. Lash

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** Via email from LTrocine

Enclosure 1

FACTUAL SUMMARY OF OI INVESTIGATION
REPORT NO. 1-2005-036

An investigation was initiated on August 31, 2005, by the U. S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI), Region I to determine if a contract (Demark Inc.), mechanical engineer working formerly at the Beaver Valley Power Station (BVPS), provided false information to BVPS when the engineer signed an engineering change package (ECP) for the replacement reactor vessel closure head project (RRVCHP) on June 1, 2005, indicating that the required work had been completed, when it had not been completed. Based on evidence developed during its investigation, OI substantiated that the former contract engineer deliberately provided false information to BVPS by signing the RRVCHP ECP indicating that all of the required work had been completed when he knew otherwise.

The evidence supporting the conclusion included information identified by the licensee that certain sections of the written design change package, including the Design Interface Evaluations (DIEs), were not completed as specified by the design change process requirements at BVPS. OI interviewed individuals and reviewed the licensee's documentation associated with the incomplete ECP. During OI's interview with the contractor engineer, he admitted being knowledgeable of the fact that the ECP work was not complete when he signed the package, that he knew that the BVPS design change process procedure required the DIEs be completed prior to his signing the ECP as complete, and he admitted to OI that he probably should not have signed off on the ECP until the missing information had been received. OI noted that while he asserted that he had made management aware of the fact that the required information was not complete, other testimonial and documentary evidence gathered during the OI investigation does not support this claim and revealed that management was unaware of this fact. The contractor engineer also admitted that only two or three of the (~25 total) DIEs were completed, and that some additional technical work had not been completed at the time that he had signed the ECP. As a result of the engineer's admission and lack of supporting evidence into his claim that BVPS management was aware of the incomplete status of the signed ECP, OI concluded that the contractor engineer deliberately provided false information to BVPS when he signed the ECP indicating that the required work was complete, while knowing that the DIEs were not completed.

Attachment 2:

September 26, 2002

Mr. William R. Kanda
Vice President - Nuclear, Perry
FirstEnergy Nuclear Operating Company
P. O. Box 97, A290
Perry, OH 44081

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 3-2001-059

Dear Mr. Kanda:

This refers to an investigation initiated on December 28, 2001, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) to determine whether a contract insulator deliberately provided incomplete and inaccurate information to the First Energy Operating Company (FENOC) to obtain unescorted access to Perry Nuclear Power Plant. Based on the information developed during that investigation, OI concluded that the individual deliberately failed to fully disclose his entire criminal background history on his personnel security questionnaires. The synopsis of the OI report is enclosed. No enforcement action is being taken against FENOC in this matter. This concludes the NRC's investigation into this matter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions concerning this matter please contact me at (630) 829-9500.

Sincerely,

/RA/

Cynthia D. Pederson, Director
Division of Reactor Safety

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

Enclosure: As stated

bcc: AMS File No. RIII-2001-A-0128

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¹Approval to release OI synopsis was provided on 9/12/02 in an E-mail from R. Paul, RIII:OI to C. Weil, RIII:EICS, as part of EA-02-198.

SYNOPSIS

On December 26, 2001, the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, initiated an investigation to determine if a contract insulator at the Perry Nuclear Generating Station deliberately falsified access authorization records in violation (sic).

Based on the evidence developed, this investigation did substantiate that a contract insulator deliberately falsified access authorization records by failing to disclose his complete criminal history.

United States
Nuclear Regulatory Commission



Report of Investigation

PERRY NUCLEAR POWER STATION

Deliberate Violation of Technical Specification
Requirements Regarding Overtime, and Deliberate
Falsification of Overtime Records

Attachment 3

Office of Investigations

Reported by OI:R111

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FOIA- 2004-0187

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Title: PERRY NUCLEAR POWER STATION

**DELIBERATE VIOLATION OF TECHNICAL SPECIFICATION
REQUIREMENTS REGARDING OVERTIME, AND DELIBERATE
FALSIFICATION OF OVERTIME RECORDS**

Licensee:

**FirstEnergy Nuclear Operating Company
76 South Main Street
Akron, OH 44308**

Docket No.: 50-440

Reported by:

Case No.: 3-2002-031

Report Date: October 6, 2003

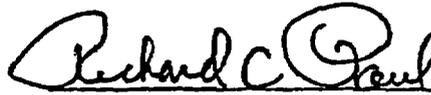
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**William C. Franz, Special Agent
Office of Investigations
Field Office, Region III**



**Richard C. Paul, Director
Office of Investigations
Field Office, Region III**

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SYNOPSIS

This investigation was initiated on October 23, 2002, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine whether Atlantic Group (AG) contractors and/or Perry Nuclear Power Station (Perry) supervisors deliberately violated technical specification requirements regarding overtime and deliberately falsified overtime records in violation of 10 CFR 50.5, 10 CFR 50.9 and Perry Technical Specification 5.2.2.e.

Based upon the evidence developed, this investigation did substantiate that AG contractors and Perry supervisors deliberately violated overtime technical specification requirements regarding overtime and deliberately falsified overtime records.

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Case No. 3-2002-031

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Case No. 3-2002-031

LIST OF INTERVIEWEES

Exhibit
No.

7c	[REDACTED]	20
7c	[REDACTED]	16
7c	[REDACTED]	17
7c	[REDACTED]	13
7d	[REDACTED]	2
7c	[REDACTED]	12
7c	[REDACTED]	19
7c	[REDACTED]	15
7c	[REDACTED]	18
7c	[REDACTED]	14

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Case No. 3-2002-031

DETAILS OF INVESTIGATION

Applicable Regulations

10 CFR 50.5: Deliberate Misconduct (2001 Edition)
10 CFR 50.9: Completeness and Accuracy of Information (2001 Edition)
Perry Technical Specification 5.2.2.e

Purpose of Investigation

This investigation was initiated on October 23, 2002, by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region III (RIII), to determine whether Atlantic Group (AG) contractors and/or Perry Nuclear Power Station (Perry) supervisors deliberately violated technical specification requirements regarding overtime and deliberately falsified overtime records in violation of 10 CFR 50.5, 10 CFR 50.9 and Perry Technical Specification 5.2.2.e.

Background (Exhibit 1)

On September 17, 2002, Doug SIMPKINS, Resident Inspector at Davis-Besse, was contacted by [REDACTED] who was employed by FirstEnergy Nuclear Operating Company (FENOC) at Davis-Besse. [REDACTED] indicated that in March 2001, he visited Perry as a peer coordinator in the MOV Program. Perry contracted with AG to perform maintenance and an overhaul of the valves. AG utilized workers from Adecco/Tad (a labor supply vendor) to augment their personnel. According to [REDACTED] one of these [REDACTED] stated at a morning meeting with the engineers that he would continue to work and credit his hours onto the next week, thereby exceeding the overtime limits for safety related work. [REDACTED] said he expressed concern to [REDACTED] and the others present that this could not be done. [REDACTED] said that [REDACTED] employee, [REDACTED] was present as a witness to the incident. [REDACTED] later asked for the time sheets from the contract workers and found they had worked the excessive overtime and then falsified the time sheets. [REDACTED] [REDACTED] on the issue, but when this CR was also classified as a failure to file an overtime deviation, [REDACTED] and the CR was reopened. [REDACTED] indicated that FENOC counseled the AG employees on this issue, but they also stated, "falsifying time cards is not that serious of an issue." [REDACTED] John WOOD, Site Vice President, and informed him of the situation. The issue was eventually dropped after [REDACTED] (Exhibit 1).

Interview of [REDACTED]

[REDACTED] At that time, he overheard a

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conversation between [redacted] last week, and they wanted to get in as many hours that week as possible. They also discussed that they would like to work their days off, but [redacted]. Because the plant was very stringent about giving overtime deviations during outages, [redacted] not to worry about overtime and that they would be "administratively creative" with their time keeping. At this time, [redacted]. The next day, on [redacted] [redacted] noticed that [redacted] was there all day, [redacted] and [redacted] checked and found that [redacted] had not turned in an overtime deviation for his day off on [redacted] (Exhibit 2, pp. 3-6).

Agent's Note: According to Perry Technical Specification 5.2.2.e, overtime deviations are required to allow employees or contractors to exceed 72 hours in a 7-day period rule and are usually approved and/or disapproved at the Outage Director level. This rule was designed to ensure that personnel conducting work on nuclear related equipment were not mentally fatigued and were capable of performing their tasks safely and effectively.

The next day, on [redacted] [redacted] came in and also worked on his [redacted] they had enough people to do the test already set up for that shift. [redacted] had an overtime deviation, but he did not. On March 19, 2001, [redacted] and told him that he had concerns about what [redacted] reported as time worked, as well as overtime deviations. After reviewing their time cards, [redacted] and indicated that [redacted] incorrectly submitted their time cards and that he sent them back to Adecco/Tad's Lead Contractor for correction. [redacted] in which [redacted] falsified the time cards at the time of submittal to skirt the overtime deviation. On March 22, 2001, [redacted] indicating that they failed to get the deviations, but that there was no problem with the submittal of the time cards. [redacted] who stated that his conscience had been bothering him, reopened the CR and entered the facts as they actually happened (Exhibit 2, pp. 6-9, 11-12).

[redacted] during [redacted] statement. Perry supervisors who also heard the statement were [redacted]. However, [redacted] was not in trailer when [redacted] statement was made. The time was approximately 6:30 p.m., during shift turnover. [redacted] during a discussion with Perry supervisors, stated that since the outage was ending and he had to travel on a certain day, he would not get 40 hours for that week and would not receive a full per diem check. The conversation then led to [redacted] saying that he could work on his day off, and the supervisors would not have to worry about getting an overtime deviation, since it could be administratively taken care of. [redacted] walked out of the trailer. After the shift turnover meeting,

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[redacted] returned to the trailer and that was when [redacted] 7d
[redacted] When [redacted] came in on their days off, their basis 7c
was that [redacted]. However, they (Perry) had already proved 7c
that they had enough people, even with [redacted]
adjusted the time cards by putting the 12 hours worked on [redacted] day off to another day, which
showed no indication of working more than 72 hours that week. [redacted] it was the 7d
supervisor's responsibility to ensure that the 72-hour rule was not exceeded, and if so, to submit
an overtime deviation request to plant management for authorization (Exhibit 2, pp. 18-26).

[redacted] also stated that he believed that [redacted] minimized the incident and the [redacted] 7c
[redacted]. The front cover of the CR did not indicate falsified records, but 7d 7c
instead, [redacted] and did not
state the issues correctly. Once the outage was over, [redacted]
[redacted] was the one who 7d, 7c
[redacted] believed that financial gain was what motivated
[redacted] to falsify his overtime. [redacted] also believed that the supervisors were trying to 7d
whitewash the facts by justifying that [redacted] were needed to work on [redacted]
[redacted]. He was not aware of any kind of favoritism between [redacted] and Perry supervisors,
except for previously working at Perry as a contractor. [redacted] would not 7c, d
have adjusted the time cards on his own unless instructed by [redacted]
[redacted] (Exhibit 2, pp. 29, 31-36).

Coordination with Regional Staff

On October 7, an Allegation Review Board (ARB) was held on this matter, but the NRC staff did not have all of the relevant information for OI to make a decision on accepting this issue for investigation. This information was subsequently provided to OI on October 23, 2002. At this ARB, it was determined that [redacted] actions potentially violated Perry Technical Specification 5.2.2.e and 10 CFR 50.5 (Exhibit 3).

Coordination with the Regional Counsel

This investigation was initiated with the concurrence of NRC:RIII Counsel Bruce A. BERSON, 5
[redacted]

Review of Documentation

The licensee provided OI:RIII with a copy of [redacted], prepared by [redacted] on 7c
[redacted]. The report indicated that [redacted] worked on their day 7c
off, exceeding 72 hours in a 7-day period, without an overtime deviation. The Corrective Action
Block indicated that the time cards submitted for the week of [redacted] accurately 7c
reflected the hours worked by the [redacted] individuals (Exhibit 4).

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The licensee also provided OI:R/III with a copy of [REDACTED] 7c
[REDACTED] The report revealed that on March 19, 2001, at the
same time the time cards for the contractors for the week of [REDACTED] were submitted for
the week in question [REDACTED] 7d
[REDACTED] reviewed 7c
the time sheets for the days in question, found them to be incorrect, and returned them to the
[REDACTED] who corrected and submitted the time sheets for processing 7c
(Exhibit 5).

[REDACTED] was [REDACTED] on [REDACTED] pursuant to a 7c
meeting involving RFO8 MOV Project personnel [REDACTED] During this meeting,
errors made during these events, management expectations, and ways to prevent recurrence were
discussed (Exhibit 6).

The licensee furnished OI:R/III with copies of [REDACTED] time cards for the week 7c
of [REDACTED] time card showed he worked 12 hours on Monday [REDACTED],
requiring an overtime deviation. [REDACTED]
[REDACTED] time cards were 7c
the corrected versions of actual hours worked by [REDACTED] on their days off
(Exhibit 7).

Agent's Note: The original time cards showed that [REDACTED] did not 7c
work on [REDACTED] respectively, which were their designated days off that
week. The licensee claimed all attempts to locate the original time cards were
unsuccessful.

[REDACTED] 7d

[REDACTED] 7d

[REDACTED] with a copy of a policy regarding falsification of records signed by 7d
WOOD. The policy notification, effective October 1998, stated that any employee who falsified
records, reports or forms, or who knowingly signed any document known to contain false
material, would be subject to immediate discharge (Exhibit 10).

On August 12, 2003, FENOC provided OI:R/III with a response letter pursuant to a request for
overtime deviation and time card record information. The letter indicated that after FENOC's
review of the overtime deviation database and microfiche files, no approved overtime deviations
for [REDACTED] during RFO8 were found. Furthermore, a review was also conducted 7c

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of the time cards submitted by [REDACTED] during that period. FENOC acknowledged that no other time cards were located, except for those previously provided to OI:R/III covering the week of [REDACTED] (Exhibit 11). 7c

Evidence

The testimony provided during the interviews was reviewed regarding the allegations involved in this investigation. In addition, documents related to the allegation, which are listed in the Review of Documentation section of this report, were also reviewed. Copies of the interviews and documents obtained by OI:R/III are attached as exhibits to this report.

Interview of [REDACTED]

[REDACTED] stated that he was at Perry during RFO8 for valve testing. While working on a Monday morning day shift, he overheard [REDACTED] talking to either [REDACTED] or [REDACTED] about time cards. At this time, [REDACTED] made the statement that he would be traveling to the AG that week and was going to indicate time worked on his time card, even though he would not be on site for the entire week. He could not remember the supervisor, but [REDACTED] and the supervisor went back and forth over the issue. [REDACTED] ended up working the entire shift that day. He did not hear how [REDACTED] and the supervisor decided to do the paperwork. [REDACTED] believed the conversation took place on a Monday at approximately [REDACTED]. [REDACTED] also thought there were [REDACTED] present when [REDACTED] made the statement, but could not remember who they were (Exhibit 12, pp. 3-7). 7c

[REDACTED] further stated that what [REDACTED] actually meant by his statement was that since he was traveling at the end of the week, it should not matter on his time card that he would come in and work on his day off. However, to [REDACTED]'s knowledge, [REDACTED] violated the 72-hour window at the other end of the shift. The 72-hour window meant more than 72 hours could not be worked within a 7-day period without a waiver. To [REDACTED] knowledge, Perry did not grant any waivers (known as overtime deviations) because they felt they had adequate manpower. It was his understanding that no one was allowed to work a 7-day period. [REDACTED] believed it was [REDACTED] who told them there would not be any overtime deviations during that outage. In fact, [REDACTED] was pretty sure it was [REDACTED] because he said they were going to do the outage with a 6-day window: no deviations (Exhibit 12, pp. 8-11). 7c

[REDACTED] also stated that he was surprised to see [REDACTED] come in that day, because it was talked about the day before that he was going to be off. [REDACTED] assumed they had an overtime deviation since the job they were working on carried on for a few days from shift to shift. He just thought that they wanted to get the job done and wanted [REDACTED] to do it. [REDACTED] was not a part of the conversation between [REDACTED] and the supervisor, but [REDACTED] talk about traveling, not being there for the rest of the week, and time cards, made [REDACTED] wonder what

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they were doing. There may have been deviations in other groups for people working 7 days a week of which he was not aware (Exhibit 12, pp. 15-17).

Interview of [REDACTED]

[REDACTED] individuals believed to have worked on their days off, exceeding the overtime limits. Furthermore, Perry management did not get an overtime deviation for them. [REDACTED] 7c

[REDACTED] Also, since this was something that took place on the [REDACTED] shift, it was brought to his attention after the fact. The two individuals responsible for [REDACTED] 7c

However [REDACTED] 7c

[REDACTED] (Exhibit 13, pp. 6-9).

[REDACTED] further stated that he was present when [REDACTED] talked about administratively correcting his hours to avoid exceeding the 72-hour limit. The mistake made from the [REDACTED] was that they should have countered [REDACTED] comment with, "no, we need to write an overtime deviation. That's not how we do business here." However, [REDACTED] did not put much credence in [REDACTED] statement and took it just as a joking comment. He never saw [REDACTED] time cards or schedules that week because they were on the [REDACTED] 7c

He believed that [REDACTED] would have probably [REDACTED] their time cards. [REDACTED] 7c

[REDACTED] they should have taken steps in the trailer to turn the conversation with [REDACTED] around or ensure that Perry expectations were being met. At the time, [REDACTED] considered [REDACTED] statement to be a flippant comment and did not respond to it. However, he later believed that they should have taken the comment more seriously since they had already processed at least three overtime deviations during the course of the outage (Exhibit 13, pp. 13-16). 7c

[REDACTED] because that week they were ramping down their contract force to the point of having minimal staffing available to do any tests on any given day. [REDACTED] 7c

[REDACTED] having any friendship or personal relationship with either [REDACTED]. He stated that [REDACTED] had worked for Perry during four or five outages under various contractors. [REDACTED] stated they had a very high regard for [REDACTED] abilities, organizationally and work-wise, and had a lot of confidence in him. From a contract standpoint, [REDACTED] 7c

[REDACTED] It was not until a week or two after the outage that [REDACTED] knew that overtime deviations were not submitted for [REDACTED]. Once he found out [REDACTED] 7c

Even though [REDACTED] was not responsible for the overtime and time card issue [REDACTED] 7c

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[REDACTED]

(Exhibit 13, pp. 17-22, 26).

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Interview of [REDACTED]

[REDACTED] stated that he knew [REDACTED] was not responsible for overseeing [REDACTED] hours because he was on a different shift. However, [REDACTED] He could not recall [REDACTED] coming in and exceeding the 72-hour rule by working on Tuesday, [REDACTED] He was not responsible for [REDACTED] but believed it was either [REDACTED] denied hearing [REDACTED] make the statement of "administratively correcting or adjusting" overtime. He knew there was a discussion in the [REDACTED] involving time sheets and overtime, but did not take part in that discussion (Exhibit 14, pp. 4-8).

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[REDACTED] further stated that while he was standing in the [REDACTED] he did hear parts of a conversation about somebody exceeding the required or allowed amount of work time. Nonetheless, he did not talk with anyone directly about time card issues. He did remember [REDACTED] about the problem with the time cards and that someone came in on what was supposedly their day off. [REDACTED] did not recall signing any time cards, [REDACTED] but he usually left that up to Perry Administration. [REDACTED] believed that there were overtime deviations submitted during the outage, but was unaware of how many. He submitted at least one, but could not remember who it was for. According to [REDACTED] the 72-hour rule prohibited anyone working on safety related equipment to work more than 72 hours in a 7-day period without having a deviation in effect. He was unaware of any personal relationships between [REDACTED] except for cordial business relationships (Exhibit 14, pp. 15-19).

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Interview of [REDACTED]

[REDACTED] stated that he knew both [REDACTED] and [REDACTED] Around [REDACTED] remembered a group of supervisors, consisting of the [REDACTED] talking about the valves during shift turnover. He recalled [REDACTED] coming in and talking about having to work overtime in order to fix a valve, but none of the [REDACTED] questioned [REDACTED] about it at that time. He did hear [REDACTED] use the term "innovative timekeeping" instead of "administratively corrected," regarding overtime. He took that to mean that someone was coming in on their day off and agreed that it meant to submit a time card that was false. However, [REDACTED] overlooked [REDACTED] statement as a serious concern at the time, because things are said in the [REDACTED] that are known to be unintentional. He questioned the fact that if someone was going to do something like that, why would they verbalize it (Exhibit 15, pp. 3-8).

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[redacted] stated that he thought he was the one who [redacted] time sheets. He and [redacted] were equals on the [redacted] worked on their shift. As far as he knew [redacted] Although [redacted], he had no intention of signing an illegal time sheet. He emphasized that he would not have signed off on a falsification if it were his kid's report card, and certainly not in the nuclear industry. He was not aware of why an overtime deviation was not submitted for [redacted] and since he was unaware that it was [redacted] day off, he never questioned him about it. According to [redacted] although it would not have been hard to get an overtime deviation for [redacted] they could have had someone else do the valve work instead of [redacted] on his day off. [redacted] acknowledged that even after signing off on [redacted] time card, it was really unclear to him whether [redacted] was supposed to be working or if he exceeded his hours. However, [redacted] assumed that he put in an overtime deviation for [redacted] (Exhibit 15, pp. 8-14).

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[redacted] also stated that it was discussed among the supervisors that something was wrong and they needed to put in an after-the-fact deviation. They also needed to write a CR and correct the time sheets because no one would sign an incorrect time sheet. [redacted] time card did accurately reflect him working overtime on those days and they [redacted] did put in a deviation after-the-fact. However, [redacted] was not sure why the deviation never took effect, but believed it could have been an oversight. He recalled talking to [redacted] about doing the deviation accurately to reflect the time and making sure that everybody suffered through the consequences of something that was not right. He and [redacted] spent several days agonizing over the matter. [redacted] was actually the one who took the [redacted] and was really more the [redacted] admitted, resulting in the internal investigation, that they screwed up and that the overtime issue should not have happened (Exhibit 15, pp. 14-18, 23).

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[redacted] acknowledged that [redacted] time card for the week of [redacted] was not changed or altered and accurately reflected the hours worked by [redacted] and that there was an after-the-fact deviation put in effect. For record purposes, after-the-fact deviations can be done. [redacted] believed that he would have had more responsibility than the other supervisors to put in an overtime deviation for [redacted] but expected either [redacted] or [redacted] who normally takes the lead to step up. The problem was that each [redacted] was looking for someone else to take the responsibility. [redacted] was unaware whether [redacted] had an overtime deviation, but if anyone's time card reflected overtime, then a deviation was done. He acknowledged that there should be documentation showing [redacted] deviation. Furthermore, he reiterated that none of [redacted] overtime cards were falsified and reflected the hours worked (Exhibit 15, pp. 24-28, 32-33).

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Agent's Note: On July 30, 2003, Tim MATTHEWS of Morgan Lewis (FENOC law firm) sent OI:R/III a letter indicating that [redacted] was being represented by counsel after his interview on June 19, 2003. The letter stated that [redacted] had not prepared for the interview and gave inaccurate and incomplete information. After having refreshed his recollection, [redacted] requested an opportunity to clear up any potentially incorrect

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information. MATTHEWS was advised that [redacted] could provide additional information to OI regarding this issue. To date, nothing has been received by OI. 7C

Interview of [redacted] 7C

[redacted] stated that he knew [redacted] for the MOV Project. [redacted] believed [redacted] had signed [redacted] time cards for [redacted]. During the turnover meeting, [redacted] did remember [redacted] conversation about working a seventh day, which usually was the day off. He never heard [redacted] use the term "administratively creative," but something more like "creative timekeeping." At that time, he thought the term was made jokingly, but realized that being silent after a statement like that was the wrong thing to do. [redacted] felt that if any one of the [redacted] present had told [redacted] that they would not allow something like that, then the issue would have been resolved. Furthermore, when [redacted] was talking about doing the overtime, someone should have proposed processing an overtime deviation (Exhibit 16, pp. 3-9). 7C

[redacted] stated that he and [redacted] were the [redacted] but he was ultimately responsible for the [redacted]. Although he held himself most responsible for what occurred, any one of the [redacted] could have challenged [redacted] statement. According to [redacted] the original time cards submitted by [redacted] were incorrect. After the issue was raised by a [redacted] who heard [redacted] statement at the time, they immediately pulled the time cards and had [redacted] come back in and change the times. Once the time cards were corrected, [redacted] showed himself working over 72 hours for that week. [redacted] did not believe that an overtime deviation was submitted after the hours were corrected. [redacted] came in and worked overtime on his day off, on [redacted] [redacted] came in and worked overtime on his day off, exceeding the 72-hour rule. [redacted] did remember talking with [redacted] about the fact that the time cards were turned in incorrectly (Exhibit 16, pp. 10-16). 7C

[redacted] also stated that [redacted] was in the [redacted] during shift turnover, but did not know whether he heard [redacted] statement. However, [redacted] was not a part of pulling the time sheets and reviewing them. [redacted] thought that [redacted] came back and changed not only his [redacted]. He did not know whether [redacted] submitted his own original time card or if it was done by [redacted]. [redacted] stated that everybody was working different hours and had different days off, and since a lot of things were going on, the monitoring of hours was not one of those things that he put a lot of time into. As a result of the overtime issues, [redacted] was not reprimanded, but instead attended a meeting where [redacted] talked to the [redacted] about what they had done and about not meeting management's expectations. He later admitted that he [redacted] did not maintain control of things like he should have (Exhibit 16, pp. 18, 20-23). 7C

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[redacted] admitted that the time card issue was not handled right and there should have been an overtime deviation in effect. He remembered hearing a statement made by an Assistant Outage Director that overtime deviations would not be easy to get. [redacted] contended that the level of difficulty in getting overtime deviations depended on the need of the person involved and the criticality of the job. However, he also implied that options did exist other than having [redacted] come in without the overtime deviation. They could have either not performed the tests or used other people instead. [redacted] emphasized that a [redacted] cannot let schedule pressures allow them to make those kinds of bad judgements. He did not know of any personal friendship between [redacted] supervisor resulting in favoritism towards [redacted]. [redacted] believed that [redacted] was a hard worker who was only interested in getting the job done. As [redacted] it was their job to rein him back in, which [redacted] believed was not done very well (Exhibit 16, pp. 28-34).

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Interview [redacted]

[redacted] stated that he knew [redacted] as one of the participants in their [redacted]. He believed that during RFO [redacted] was employed by the [redacted]. [redacted] was made aware of the fact that [redacted] worked overtime on [redacted] which violated the 72-hour/7-day rule. He did not believe there was an overtime deviation in place at the time [redacted] came in on his day off. [redacted] expected each Project Manager to know what type of work resources they had, and to administer all of the required working hours and any other company functions that took place. He acknowledged that a falsification of overtime records would not have been taken lightly by the company. However, he was not aware of any time cards being falsely submitted and had not seen a time card until prior to being interviewed. [redacted] did not know anything about the time cards being returned for [redacted] to correct (Exhibit 17, pp. 6-11).

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[redacted] also stated that based on a review of the CR documents, he believed that a correction was made as to an after-the-fact overtime deviation for [redacted]. After-the-fact deviations are not customary, but they do happen based on exigent circumstances. He knew that it was Perry policy to have overtime deviations approved in advance, and if they were not, then a CR and investigation was required as to why it did not happen. [redacted] was not counseled or reprimanded by [redacted] but the information was sent to his employer to handle. [redacted] did not think that the situation involving [redacted] was handled very well, but by the time he was made aware of the issue, [redacted] was gone. Nevertheless, [redacted] did work at Perry during RFO9. [redacted] did not receive any information on the overtime matter from the participants or supervisors until after the CR was written. He did have one counseling session with [redacted] and told him that the results of their meeting would be documented in [redacted] personnel record as an indicator of performance (Exhibit 17, pp. 12-16).

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[redacted] further stated that if it was determined that a deliberate falsification occurred due to incorrect time cards, then termination would result. However, if a falsification occurred and it

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was determined to be an honest mistake, then there probably would be some form of minor disciplinary action. [redacted] asserted that Perry does not tolerate the falsification of documents, which have resulted in terminations before. [redacted] worked for [redacted] and he never had any instances of improprieties or inappropriate behavior. As the [redacted] During non-outage conditions, [redacted] recalled being approached by WOOD, who asked [redacted] who ran the [redacted] When he replied that [redacted] WOOD insinuated that as [redacted] the [redacted] should be handling the matter, referring to disciplinary actions (Exhibit 17, pp. 21-22, 24-26).

Interview of [redacted]

[redacted] stated that he knew [redacted] but never heard him make the statement "administratively creative" or anything of that nature. He believed that he [redacted] did work on [redacted] but he was not in the [redacted] at that time. He was not aware of [redacted] hours because [redacted] was on the [redacted] and [redacted] worked on the [redacted] [redacted] did not remember [redacted] or whether he was supposed to be working. Both [redacted] worked on the day shift and [redacted] and [redacted] as the [redacted] He did have the authority to sign off [redacted] time sheets, but could not recall any concerns expressed by [redacted] about working on [redacted] or having exceeded the overtime rule (Exhibit 18, pp. 5-10).

[redacted] denied ever stating or indicating to somebody that there would be no overtime deviations at Perry during RFO8. The information regarding the time sheet issue was only second hand information, and he did not deal with time sheets, except for [redacted] and the other [redacted] never dealt with [redacted] except during shift turnovers and did not have any discussions with [redacted] about working overtime. Additionally, he never heard about any discussions or concerns among [redacted] regarding overtime issues. However, the need to adhere to the rule of working over a 7-day period was discussed during the outage. [redacted] had no knowledge of either [redacted] being involved in submitting false time cards. Although [redacted] believed that he never made the statement about no overtime deviations, he knew that their policy discouraged the use of overtime deviations. However, there was a process by which it could be entered and approved (Exhibit 18, pp. 10-12, 15-16, 18-21).

Interview of [redacted]

[redacted] At that time, he worked as a

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[REDACTED] 7C
[REDACTED] could not recall if he worked overtime on his day off on [REDACTED]. However, if he did, he made sure that it was not over the 72-hour rule limit. He never worked over 72 hours in one week. [REDACTED] was not aware of [REDACTED] ever violating the 72-hour overtime rule and could not recall [REDACTED] worked overtime on his day off on [REDACTED]. Though [REDACTED] was the [REDACTED] rarely dealt with him since he worked out of the [REDACTED]. The reason [REDACTED] never got involved in the [REDACTED] conversations was that he always reported to the [REDACTED] (Exhibit 19). 7C

[REDACTED] he knew nothing about overtime deviations or how they worked. He was responsible for preparing his own time sheets, but turned them into [REDACTED] who he believed signed off on them. [REDACTED] never heard [REDACTED] make any comment about being "administratively creative" with his timekeeping, nor did [REDACTED] ever tell him to make adjustments to his time sheets concerning overtime. In fact, he could not recall being a part of any discussion involving overtime or changing of time sheets. [REDACTED] was unaware of any changes made to his time sheet for the week of [REDACTED] since it was the last week of the RFO and [REDACTED]. As far as he recalled, no one from Perry ever contacted him regarding his work schedule or time sheets after leaving. [REDACTED] was unsure who [REDACTED] really worked for at Perry, and found it very difficult to track who was supposed to be working for who during so many shift changes (Exhibit 19). 7C

Interview of [REDACTED]

[REDACTED] stated that in March of 2001, he worked on the RFO8 MOV Project at Perry. As one of the [REDACTED] 7C
[REDACTED] as to what tests were being scheduled [REDACTED] who would do the [REDACTED] 7C
[REDACTED] was not sure, but [REDACTED] He believed that [REDACTED] 7C
[REDACTED] denied ever making the statement "administratively creative" or any similar statement of any type. He comprehended the statement to mean marking up time sheets in some incorrect manner to skirt policies that were in place. [REDACTED] knew the statement as "creative timekeeping," and first heard it used by his [REDACTED] Jim McCOY, who was on the night shift during RFO8 (Exhibit 20, pp. 7-13). 7C

[REDACTED] further explained that since McCOY resided out-of-State, Adecco/Tad had rules about working at least 32 hours per week in order to get per diem. At this time, McCOY told [REDACTED] that he brought up the idea to the [REDACTED] 7C
[REDACTED] about working his day off and indicating it on the shortened week's time sheet to make sure he had the 32 hours. [REDACTED] who was also present, said that he would do it as well since he was in the same situation. At that point, [REDACTED] then thought [REDACTED] 7C

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that if the subject was broached to Perry supervisors during the turnover and nothing was said, then either the 72-hour rule or their approach must not be a big deal. He also thought that whether his hours showed up as straight time or overtime, it did not make any difference in his pay, because straight time rates were cheaper to the client than overtime rates. [REDACTED] knew 7C that when he came in on Monday or Tuesday, he worked 7 days straight and exceeded the 72-hour limit. The reason he came in on his day off was because he believed that Perry needed him to [REDACTED] and nobody else was available. Nonetheless, [REDACTED] knew that 7C he bent the 72-hour overtime policy and was not trying to justify it (Exhibit 20, pp. 14-20).

Agent's Note: According to Perry personnel, McCOY was not employed by the AG during RFO8, but worked as an independent contractor. Attempts to find McCOY have been unsuccessful at this time. Perry is in the process of checking database records to determine McCOY's employment status on the MOV Project during RFO8.

[REDACTED] stated that getting an overtime deviation would not have been as big of a deal as he thought, and if he would have asked for a deviation, he would have definitely gotten one. After the outage was over, he found out that Perry approved hundreds of deviations in the past, and very seldom disapproved any. [REDACTED] had overtime deviations written for him at other power plants and realized that he had made a mistake at Perry. To the best of his knowledge, [REDACTED] knew that both he [REDACTED] were coming in on their days off. They were also aware that b [REDACTED] working on Monday, he would have exceeded the 72-hour overtime rule. During that week, he put in seven 12-hour days, which added up to 84 hours. [REDACTED] knew for a fact that [REDACTED] were aware of the hours worked by him and [REDACTED] because of the original time sheets. Although Perry supervisors insinuated that they made a mistake regarding the overtime hours, [REDACTED] indicated that he knew better (Exhibit 22, pp. 22-27, 29-30). 7C

[REDACTED] also stated that while denying ever using the term "creative timekeeping," he did not want to indicate that he never used it in a joking way. When [REDACTED] and McCOY submitted their original time sheets, they showed having no hours worked on their days off and moved those hours to a different day of the week. [REDACTED] who collected the incorrect time sheets, originally turned them into [REDACTED] but he refused to sign them. However, [REDACTED] was willing to sign the time sheets and they were incorrectly submitted. After [REDACTED] about the incorrect time sheets being turned in, [REDACTED] called [REDACTED] at home and told him that the time sheets needed to be corrected and that an after-the-fact overtime deviation needed to be written. [REDACTED] immediately came in and [REDACTED] because they were unavailable to correct the errors. After resubmitting the new time sheets, [REDACTED] believed that [REDACTED] who was the [REDACTED] was unaware of the time sheet changes. Nonetheless, [REDACTED] did not get reprimanded by FENOC for exceeding the overtime limits, but did attend a meeting led by [REDACTED]. 7C 7C 7C

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considered a coaching session. [redacted] also received no formal reprimands from the AG, but had apologized profusely to everyone involved for the wrongness of his actions (Exhibit 20, pp. 32-33, 35-38, 42-43, 49-51). 7c

Agent's Analysis

As a result of the evidence developed throughout this investigation, it can be concluded that [redacted] deliberately violated technical specification requirements regarding overtime and deliberately falsified overtime records at Perry. According to the documentation [redacted] the [redacted] personnel exceeded overtime limits without an overtime deviation submitted. [redacted] worked on their days off during their last week of work, exceeding 72 hours in a 7-day period. In [redacted] disclosed that inappropriate oversight and supervision of the job and contract employees were demonstrated by [redacted] supervision. [redacted] for [redacted] errors made during these events, management expectations, and ways to prevent recurrence were discussed. [redacted] discussed management expectations and ways to prevent recurrence, but no disciplinary action was implemented. 7c 7c 7c 7c 7c

Perry Consultant Employee Time Cards Sheets, specifically during the period of [redacted] disclosed that [redacted] worked 12 hours on [redacted] and [redacted] worked 12 hours on [redacted] time sheet showed [redacted] and was [redacted] time sheet. [redacted] showed, "Day-off worked. In support of the [redacted] No Deviation Submitted," and was [redacted]. The e-mail from [redacted] made it appear that [redacted] had more knowledge regarding the overtime issues at Perry than he [redacted] indicated. The e-mail also implied some form of concern on the part of [redacted] regarding these matters. The e-mail from [redacted] pointed out concerns about the integrity of Perry supervision and covering up the falsification of overtime records. Perry policy notification letter, signed by FENOC Vice President WOOD, clearly established the company's position in relation to the falsification of records. It indicated, "Any employee who falsifies records or knowingly signs a document known to contain false material, shall be subject to immediate discharge." 7c 7c 7c 7c 7c 7c d 7c d

The Perry response letter, pursuant to a request for overtime deviation and time card record information, showed that no overtime deviations were in effect at that time. It also acknowledged that after searching for any additional time cards (original time sheets) submitted by [redacted] none could be located. After interviewing [redacted] it could be determined that they lacked culpability in this matter. Although [redacted] may have been in the [redacted] at the time of [redacted] comment, there was no testimonial or documentary evidence supporting that he actually participated in the falsification of overtime records. Furthermore, since he did not supervise either of the contractors, he would 7c 7c

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FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

not have been ultimately responsible for submitting the overtime deviations. Although according to the e-mail it appeared that [REDACTED] knew more than he actually indicated, there was no evidence supporting a nexus between [REDACTED] and the false overtime records. [REDACTED] may have somewhat supervised [REDACTED] but he was not in the [REDACTED] during [REDACTED] statement, nor did he sign off on [REDACTED] time sheet for the week of [REDACTED]. While [REDACTED] was not aware of the overtime matter until the CR was written. As [REDACTED] would not have participated in the events that occurred in the [REDACTED], and would have expected his [REDACTED] to supervise the required working hours as well as any other company functions that took place. 7c

Although [REDACTED] during the course of the outage [REDACTED] acknowledged being present in the [REDACTED] during [REDACTED] statement, but dismissed it as a joking comment. However [REDACTED] did know that [REDACTED] worked on their days off without having an overtime deviation in effect. According to [REDACTED] was also involved in the changes to the original time sheets. According to [REDACTED] it was not necessary to have both [REDACTED] work overtime on their days off, and could have either not performed the tests or used other people instead. Both [REDACTED] admitted to knowing that [REDACTED] worked on their days off without an overtime deviation. They also admitted that the overtime issue was not right and there should have been a deviation in place. [REDACTED] was aware of [REDACTED] changing the original time cards and admitted that [REDACTED] was also involved. [REDACTED] however, denied that any of the time sheets were falsified, they reflected the actual hours worked, and there was an after-the-fact deviation put into effect. [REDACTED] lacked credibility since other testimonial evidence proves the existence of original time sheets. The FENOC database search also verified that no after-the-fact deviation was submitted. While [REDACTED] denied having any knowledge or involvement in this matter, [REDACTED] confessed to the falsification of overtime records and implicated [REDACTED]. 7c 7e

Conclusion

Based upon the evidence developed, this investigation did substantiate that [REDACTED] deliberately violated technical specification requirements regarding overtime and deliberately falsified overtime records. 7c

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SUPPLEMENTAL INFORMATION

On September 23, 2003, William P. SELLERS, Special Counsel for Regulatory Enforcement, Fraud Section, Criminal Division, U.S. Department of Justice, Washington, D.C., advised that in his view, the case did not warrant prosecution and rendered an oral declination.

During the course of this investigation, interviews conducted disclosed potential allegations of fitness-for-duty violations. Based on the information obtained, it was discovered that an altercation occurred between two contractors during RFO8 at Perry. This information was forwarded to the RIII staff for review of any potential safety or technical concerns and is not included in this Report of Investigation.

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Case No. 3-2002-031

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, OI Case No. 3-2002-031, dated October 23, 2002 (1 page).
7d 2	Transcript of Interview of [REDACTED] (57 pages).
3	ARB Allegation Action Plan, Allegation No. RIII-02-A-0171, dated October 2, 2002 (5 pages).
7c 4	[REDACTED] (2 pages).
7c 5	[REDACTED], prepared by [REDACTED] on [REDACTED] (3 pages).
7c 6	[REDACTED] (2 pages).
7c 7	Perry Consultant Employee Time Card Sheets showing [REDACTED] (hours worked for the weeks of [REDACTED]) (8 pages).
7c+7d 8	E-mail from [REDACTED] (1 page).
7c+d 9	E-mail from [REDACTED] (1 page).
10	Perry Policy Notification Letter regarding falsification of records, endorsed by WOOD, effective October 1998 (1 page).
11	FENOC response letter pursuant to a request for overtime deviation and time card record information, dated August 12, 2003 (1 page).
7c 12	Transcript of Interview of [REDACTED] (25 pages).
7c 13	Transcript of Interview of [REDACTED] (33 pages).
7c 14	Transcript of Interview of [REDACTED] (25 pages).
7c 15	Transcript of Interview of [REDACTED] (35 pages).

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- 16 Transcript of Interview of [REDACTED] (38 pages). 7c
- 17 Transcript of Interview of [REDACTED] (35 pages). 7c
- 18 Transcript of Interview of [REDACTED] (22 pages). 7c
- 19 Interview Report of [REDACTED] (1 page). 7c
- 20 Transcript of Interview of [REDACTED] (60 pages). 7c

**NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III**

April 1, 2004

EA-03-208

Mr. William R. Kanda
Vice President - Nuclear, Perry
FirstEnergy Nuclear Operating Company
P. O. Box 97, A210
Perry, OH 44081

SUBJECT: NOTICE OF VIOLATION
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-031]

Dear Mr. Kanda:

This refers to the investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) into an apparent violation of the Technical Specification limit on working hours on March 12 and March 13, 2001, at the FirstEnergy Nuclear Operating Company's (FENOC) Perry Nuclear Power Plant. A summary of the OI investigation was provided to you on December 19, 2003, and a predecisional enforcement conference was held with you on March 2, 2004.

Based on information developed during the OI investigation, information contained in letters from FENOC on February 25, 2004, and March 22, 2004, and the information you provided during the predecisional enforcement conference, the NRC has concluded that a violation of NRC requirements occurred. In summary, on March 9, 2001, during Refueling Outage RF-08, at least one contract technician, responsible for testing motor operated valves (MOVs) at the Perry Nuclear Power Plant deliberately devised a plan of "creative timekeeping," so that three technicians worked on a regularly scheduled day off and charged that time to a day during the following week when they had fewer hours scheduled. One technician mentioned this plan during a regular shift turnover meeting that was attended by at least three FENOC supervisors associated with the MOV testing program. A comment about "creative timekeeping," was attributed to at least one technician. Another employee reminded those attending the turnover meeting that regardless of the number of hours the technicians planned to work, plant procedures limited them to a maximum number of hours in a given period of time. Following this reminder, none of the supervisors asked the technician about his comment regarding "creative timekeeping," sought preapproval of the overtime as required by Technical Specification, or otherwise followed-up on the issue. As a result, two technicians worked in excess of 72 hours in a 7-day period without a preapproved overtime deviation. One technician worked 12 hours per day for 9 consecutive days and a second technician worked 12 hours per day for 10 consecutive days. The time card for each technician was prepared in a manner that indicated the technicians did not work in excess of 72 hours in a 7-day period. One FENOC supervisor refused to sign the time cards, apparently believing the cards contained inaccurate or incorrect information; however, that supervisor failed to take action to identify, correct, or inform management of this information.

The FENOC supervisors were all aware that a deviation from the overtime guidelines needed to be submitted and approved by plant management before the overtime could be worked. By failing to stop the technicians' plan to work in excess of the overtime guidelines and by failing to submit a request for prior approval of the overtime, the FENOC supervisors allowed a violation of the Technical Specification limiting overtime to occur. The actions of two of the supervisors are considered willful violations, representing careless disregard of the Technical Specification limiting overtime because they knew that the technicians planned to work in excess of the overtime guidelines. The other supervisor was on a different shift than the technicians and was not in direct control of their work hours. In addition, he said he believed the technician was joking when he made the comment about creative timekeeping. The NRC concluded that his actions did not rise to the level of careless disregard; however, he had an opportunity to prevent the violation of Technical Specifications. The actions of at least one technician in devising the plan to exceed the overtime guidelines is considered to be a deliberate violation of the Technical Specification requirement. Because the violation involved willfulness, it has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for a Severity Level III violation. Because this was a willful violation, the NRC considered whether credit was warranted for *Identification and Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The violation was identified to FENOC by another FENOC employee; therefore, credit is warranted for the *Identification* civil penalty adjustment factor. While corrective actions at the time the violation was identified to FENOC were minimal (e.g., corrective action report did not address the employee integrity aspect of the violation and only one of the three supervisors responsible for the violation was counseled) broader corrective actions were taken following a subsequent FENOC investigation of the violation. Corrective actions consisted of, but were not limited to: (1) sending a letter to all plant personnel on overtime management, including responsibility for compliance with work hour limits; (2) providing training to supervisors and staff on compliance, completeness and accuracy, including overtime deviations and time cards; (3) incorporating training on compliance, completeness and accuracy into your plant access training; (4) providing more detailed guidance on individual and supervisory responsibility for control of work hours; and (5) counseling the involved supervisors. On balance, credit was warranted for the *Corrective Action* civil penalty adjustment factor.

Therefore, to encourage prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice of Violation when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

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

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

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

Enclosure: Notice of Violation

cc w/encl: G. Leidich, President - FENOC
K. Cimorelli, Acting Director,
Maintenance Department
V. Higaki, Manager, Regulatory Affairs
J. Messina, Director, Nuclear
Services Department
T. Lentz, Director, Nuclear
Engineering Department
T. Rausch, Plant Manager,
Nuclear Power Plant Department
M. O'Reilly, Attorney, First Energy
Public Utilities Commission of Ohio
Ohio State Liaison Officer
R. Owen, Ohio Department of Health

FILE NAME: G:\EICS\03-208 SLIII No CP Perry FINAL.wpd

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OFFICE	RIII	E	D:OE ¹	E	RIII	E	RIII	RIII	N	RIII	N
NAME	Weil		Congel		Caniano for Pederson		Grobe for Reynolds	Clayton		Caldwell	
DATE	3/31/04		03/30/04		3/31/04		4/1/04	4/1/04		4/1/04	

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¹ HQ concurrence received 3/30/04 from Frances Ramirez, OE.

ADAMS Distribution:

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DDambly, OGC

HBell, OIG

GCaputo, OI

GGrant, RIII

CPederson, RIII

SReynolds, RIII

RCaniano, RIII

PHiland, RIII

JCreed, RIII

DHills, RIII

ADunlop, RIII

CWeil, RIII

MRing, RIII

JDixon-Herrity, OE

SLewis, OGC

RPaul, OI:RIII

WFranz, OI:RIII

RFranovich, NRR

Enforcement Coordinators

RI, RII and RIV

OE:ES

OE:EA (2)

OE:MAIL

OE:Web

RAO:RIII

OAC:RIII

SRI, Perry

DRPIII

DRSIII

PLB1

JRK1

NOTICE OF VIOLATION

FirstEnergy Nuclear Operating Company
Perry Nuclear Power Plant, Unit 1

Docket No. 50-440
License No. NPF-3
EA-03-208

During an NRC investigation concluded on October 6, 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:

Technical Specification 5.2.2.e for the Perry Nuclear Power Plant requires, in part, that administrative procedures shall be developed and implemented to limit the working hours of unit staff who perform safety related functions (e.g., key maintenance personnel). The procedures shall include guidelines on working hours that ensure adequate staff coverage is maintained without heavy use of overtime. Any deviation from the working hour guidelines shall be authorized in advance by the Plant Manager in accordance with approved administrative procedures and with documentation of the basis for granting the deviation.

Plant Administrative Procedure (PAP) 0224, "Fitness for Duty," Revision 2, February 5, 1999, implements Technical Specification 5.2.2.e.

Section 5.13 of PAP-0224 defines key maintenance personnel as those individuals physically performing or immediately supervising the performance of maintenance, repair, testing, modification, or calibration of safety-related structures, systems or components.

Section 6.14 of PAP-0224 provides, in part, that the Technical Specification overtime guidelines will be followed in the event that substantial amounts of overtime are required during extended periods of shutdown for refueling, major maintenance or major plant modifications. The guidelines state that an individual should not work more than 72 hours in any 7-day period (excluding shift turnovers). Deviations from the overtime guidelines are requested by the immediate supervisor from the Plant Manager, or designee, using the Technical Specification Overtime Deviation Request form (PNPP No. 7699). Section 6.15.2 of PAP-0225 designates the Technical Specification Overtime Deviation Request form (PNPP No. 7699) as a quality assurance record.

Contrary to the above, from March 6 to March 15, 2001, two key maintenance personnel responsible for testing motor operated valves, a safety-related function, failed to follow Technical Specification overtime guidelines. Specifically, during Refueling Outage RF-08, the two individuals each worked in excess of 72 hours in a 7-day period and the immediate supervisors failed to request deviations from the overtime guidelines in advance from the Plant Manager or authorized designee. One individual worked 12 hours per day for 10 consecutive days from March 6 to March 15, 2001, and the other individual worked 12 hours per day for 9 consecutive days from March 7 to March 15, 2001.

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

Pursuant to the provisions of 10 CFR 2.201, FirstEnergy 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 Perry Nuclear Power Plant, 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-03-208" 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, 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.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 1st day of April 2004.

Attachment 5:

May 5, 2005

EA-04-231
EA-04-232

Mr. Mark B. Bezilla
Vice President-Nuclear, Davis-Besse
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
FINAL SIGNIFICANCE DETERMINATION FOR A WHITE FINDING
AND NOTICE OF VIOLATION (NRC INSPECTION REPORT
NO. 05000346/2005010(DRS)

Dear Mr. Bezilla:

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. 05000346/2004018(DRS). The inspection finding was assessed using the Significance Determination Process (SDP) and was preliminarily characterized as White (i.e., a finding with low to moderate increased importance to safety, which may require additional NRC inspections) because it was associated with a failure to implement a risk significant planning standard (RSPS). This preliminary White finding concerned the failure of the emergency planning zone (EPZ) sirens identified on May 7, 2004.

The preliminary White finding was associated with the Ottawa County Sheriff's Office loss of its capability to activate 49 EPZ sirens, located in Ottawa County, between April 27 and May 7, 2004, and potential vulnerability to unknowingly lose its capability to activate the 49 EPZ sirens located in Ottawa County for approximately 30 days prior to a routine Alert and Notification System (ANS) test conducted on May 7, 2004. The preliminary White finding was also associated with an apparent violation of 10 CFR 50.47(b)(5), "Emergency Plans."

In our letter to you dated January 13, 2005, transmitting the inspection report and preliminary significance determination, 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 February 14, 2005, provided a written response. A copy of the your written response 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 ML050470307.

In your letter, you disagreed with the NRC's application of the SDP and preliminary significance assessment of the finding, and provided information that you requested the NRC use in a re-evaluation of the finding. Specifically, you indicated that the significance of the finding

should be assessed assuming the sirens were unavailable for only 10 days and with consideration that an alternate method was available to notify the public of an emergency. You also disagreed with our statement that you had several opportunities to correct the ANS performance indicator (PI) data prior to submitting the data to the NRC, including information provided to you by the NRC. Finally, you noted that the apparent violation associated with the submittal of the incorrect ANS PI data appeared to be consistent with the Severity Level IV violation examples included in the NRC's Enforcement Policy.

With regard to the length of time the sirens were unavailable, we re-examined the inspection results and concluded that the county officials lost the capability to activate all 49 Ottawa County EPZ sirens for approximately 10 days. In addition, we determined that the potential existed for the county officials to lose the capability to activate the 49 Ottawa County EPZ sirens for approximately 30 days. Since the ANS is designed to permit the county officials to activate the system, we determined that a loss of this capability would constitute a failure versus a degradation of the system. In addition, we concluded that the system should be considered degraded for that period of time when the potential existed for the system to be made inoperable due to a design flaw and a deficiency in the maintenance program. Therefore, we determined that the county officials' inability to activate the 49 Ottawa County EPZ sirens for 10 days and potential loss of its capability to activate the 49 Ottawa County EPZ sirens for 30 days, was appropriately considered to be a degradation of the Risk-Significant Planning Standard and was properly characterized as a White finding.

During our initial significance assessment of the finding, we did not specifically consider the availability of route alerting as an alternate method for public notification during an emergency. However, we note that the SDP already includes consideration of the presence of an alternate notification system. As a result, we concluded that a re-assessment of the significance of the finding, considering the availability of an alternate public notification method, was not necessary. We also determined that, had route alerting not been available, the finding may have been characterized as being greater than a White finding.

With regard to the statements in our January 2005 letter associated with your submittal of incorrect ANS PI data, we reviewed the information you provided in your response and determined that sufficient information was available to your staff, prior to your submittal of the discrepant ANS PI data, to indicate that the additional silent tests of the EPZ sirens should not have been included in the ANS PI data. Specifically, we determined that Nuclear Energy Institute (NEI) publication NEI 99-02, "Regulatory Assessment Performance Indicator Guideline," an NRC-endorsed document issued in November 2001, provided clear guidance which would preclude inclusion of the silent tests of the EPZ sirens in the ANS PI data. The NRC also raised questions regarding the validity of your changing the testing methodology, in the middle of a testing period, and the need for Federal Emergency Management Agency (FEMA) approval for the methodology change. Although the NRC did not raise a specific concern regarding which equipment was used to conduct the silent tests of the EPZ sirens until after the ANS PI data were submitted in July 2004, we determined that sufficient guidance was available and questions were raised regarding the revised methodology, which should have resulted in your staff determining that the silent tests of the EPZ siren tests should not be included in the ANS PI data.

After considering the information developed during the inspection and the additional information you provided in your February 14, 2005, letter, the NRC has concluded that the inspection finding associated with the degradation of the EPZ sirens 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 ensure the means to provide early notification and clear instruction to the populace within the plume exposure pathway EPZ is a violation of 10 CFR 50.47(b)(5), as cited in the enclosed Notice of Violation (Notice). The circumstances surrounding the violation are described in detail in the subject inspection report. In accordance with the NRC Enforcement Policy, the Notice of Violation is considered an 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.

Finally, in your February 14, 2005, letter, you agreed that the 10 CFR 50.9(a) violation of the Commission's regulations, documented in our January 2005 letter to you and associated with the submittal of discrepant ANS PI data for the second and third calendar quarters of 2004, was appropriately characterized as a Severity Level IV violation in accordance with the NRC's Enforcement Policy. On November 4, 2004, you submitted a letter to the NRC correcting the performance indicator data.

Based on the results of this inspection, we have determined that your submittal of discrepant ANS PI data for the second and third quarters of 2004 is a Severity Level IV violation of 10 CFR 50.9, "Completeness and Accuracy of Information." You documented the NRC's concerns regarding your submittal of the ANS PI data in your corrective action program as Condition Report 04-06632, the violation was not willful, and compliance was restored within a reasonable period of time. Therefore, this violation is being treated as a Non-Cited Violation (NCV), consistent with Section VI.A of the Enforcement Policy. The NCV was described as Apparent Violation 05000346/2004018-01 in NRC Inspection Report No. 05000346/2004018(DRS). If you contest the violation or significance of the NCV, you should provide a response within 30 days of the date of this letter, with the basis for your denial, to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with copies to the Regional Administrator, Region III, the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001, and the NRC Resident Inspector at the Davis-Besse facility (EA-04-232).

For the entire inspection period, the Davis-Besse Nuclear Power Station was under the Inspection Manual Chapter (IMC) 0350 Process. The Davis-Besse Oversight Panel assessed the inspection findings and other performance data to determine the required level and focus of

followup inspection activities and any other appropriate regulatory actions. Even though the Reactor Oversight Process had been suspended at the Davis-Besse Nuclear Power Station, it was used as guidance for inspection activities and to assess findings. Accordingly, we will use the NRC Action Matrix, in accordance with IMC 0305, to determine the most appropriate NRC response for this event. We will notify you, by separate correspondence, of that determination.

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. 50-346
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
L. Myers, Chief Operating Officer, FENOC
Plant Manager
Manager - Regulatory Compliance
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
J. Papcun, President, Ottawa County Board of Commissioners
W. King, Federal Emergency Management Agency, Region V

followup inspection activities and any other appropriate regulatory actions. Even though the Reactor Oversight Process had been suspended at the Davis-Besse Nuclear Power Station, it was used as guidance for inspection activities and to assess findings. Accordingly, we will use the NRC Action Matrix, in accordance with IMC 0305, to determine the most appropriate NRC response for this event. We will notify you, by separate correspondence, of that determination.

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. 50-346
 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
 L. Myers, Chief Operating Officer, FENOC
 Plant Manager
 Manager - Regulatory Compliance
 M. O'Reilly, Attorney, FirstEnergy
 Ohio State Liaison Officer
 R. Owen, Administrator, Ohio Department of Health
 Public Utilities Commission of Ohio
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 of Lucas County
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***See Previous Concurrence**

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DATE	4/20/05	4/20/05	4/22/05	4/22/05	4/22/05
OFFICE	NSIR *	OE ¹	RIII	RIII	
NAME	Kahler	Congel	O'Brien	MSatorius for Caldwell	
DATE	04/26/05	5/4/05	5/5/05	5/5/05	

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¹Concurrence received from Doug Starkey, OE, in E-mail 5/4/05.

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NOTICE OF VIOLATION

FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station

Docket No. 50-346
License No. NPF-3
EA-04-231

During an NRC inspection conducted between October 25 and October 29, 2004, at the Davis-Besse Nuclear Power Station, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, 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)(5) requires, in part, the means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone (EPZ) have been established.

Section 7.7 of Revision 23 of the Davis-Besse Nuclear Power Station's emergency plan indicated that the EPZ "Prompt Notification System" implements the requirements of 10 CFR 50.47(b)(5). Section 7.7 states that the Alert and Notification System (ANS), consists of 54 sirens that were installed to provide an acoustic alerting signal for the residents and transients within the 10 mile radius of the Davis-Besse Station, and that the sounding of these sirens would alert the public to tune to local radio stations for Emergency Alert Station messages. The emergency plan also indicated that local officials would activate the sirens from the Ottawa County Sheriff's Office.

Contrary to the above, between April 27 and May 7, 2004, the FirstEnergy Nuclear Operating Company, a licensee authorized to operate the Davis-Besse Nuclear Power Station, failed to provide a means for early notification and clear instruction to the populace within the plume exposure pathway EPZ. Specifically, on April 6th, the time signature of the siren activation equipment, located in the Ottawa County Sheriff's Office, was not revised the following the change to daylight savings time. On April 26th, the licensee conducted a maintenance activity which incorrectly set the time signature of one siren to one hour ahead of the actual day light savings time. On April 27th, the licensee conducted a routine polling of all of the EPZ sirens which caused the time signatures of the remaining EPZ sirens to be set one hour ahead of the actual daylight savings time. The combination of these changes caused the time signatures of the activation equipment and the EPZ sirens to differ by more than the allowed 1.5 hours which blocked activation of the sirens. As a result, the Ottawa County Sheriff's Office could not activate the 49 EPZ sirens located in Ottawa County until May 7, 2004, when the combined results of these events were identified.

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

Pursuant to the provisions of 10 CFR 2.201, FirstEnergy 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-04-231," and should include: (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 9 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, 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.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 5th day of May 2005