



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, IL 60532-4352

January 15, 2010

EA-09-267

Mr. Jack M. Davis
Senior Vice President and
Chief Nuclear Officer
Detroit Edison Company
Fermi 2 - 210 NOC
6400 North Dixie Highway
Newport, MI 48166

**SUBJECT: FERMIL POWER PLANT, UNIT 2 – NOTICE OF VIOLATION
NRC INSPECTION REPORT NO. 05000341/2009011(DRS)**

Dear Mr. Davis:

This refers to the inspection conducted on August 14 through October 23, 2009, to review the circumstances surrounding your failure to provide complete and accurate information to the U.S. Nuclear Regulatory Commission (NRC) regarding licensed operator medical examinations. During the inspection, an apparent violation of NRC requirements was identified. Details regarding the apparent violation were provided in NRC Inspection Report No. 05000341/2009010(DRS) dated November 12, 2009.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by either attending a Predecisional Enforcement Conference or by providing a written response before we made our final enforcement decision. You requested a Predecisional Enforcement Conference which was held on December 14, 2009.

Based on the information developed during the inspection and the information that you provided during the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in NRC Inspection Report No. 05000341/2009010(DRS).

On August 13, 2009, while performing a self-assessment of the Licensed Operator Requalification Program, your staff identified that since May 1999, two required licensed operator medical examination tests were no longer being conducted at Fermi. Specifically, American National Standards Institute/American Nuclear Society (ANSI/ANS) 3.4-1976, Section 5.4.2, required operators to be able to detect the odor of products of combustion, and Section 5.4.14 required tactile discrimination sufficient for operators to distinguish among various shapes of control knobs and handles by touch. All licensed operators subsequently passed olfactory and tactile tests prior to resuming licensed activities.

Your staff determined that the licensed operator medical certification program contained in Procedure MGA10, "Fitness-for-Duty," was incorporated in Procedure MGA13, "Licensed Operator Medical Certification," in December 1997. The associated forms for MGA13 did not contain testing requirements for products of combustion (olfactory testing) and tactile testing. Licensed operator medical examinations were conducted using these forms beginning in May 1999.

Since May 1999, the NRC issued and renewed numerous operator licenses based on each NRC Form 396 signed by the facility licensee stating that the licensed operator (and operator license applicant) had received a complete medical examination following the criteria provided in ANS/ANSI 3.4-1976. Because the licensee inappropriately certified on each NRC Form 396 that the requirements of ANS/ANSI 3.4-1976 were met, incorrect licensing actions were taken by the NRC. As such, the information provided to the NRC in the license renewal applications (and initial license applications) was material to the NRC licensing actions, and the licensee's failure to provide complete and accurate information to the NRC in the license renewal applications (and initial license applications) is a violation of Title 10 of the Code of Federal Regulations (10 CFR) 50.9.

Violations involving the provision of incomplete and inaccurate information are of particular concern to the NRC. In this case, the violation was considered for escalated enforcement. However, the NRC has classified this violation at Severity Level IV, after determining that its actual and potential safety significance was very low based on the following considerations: (1) the licensing decision made by the NRC was not invalidated since no actual changes or restrictions were required on any operator license because all licensed operators subsequently passed both olfactory and tactile tests before resuming licensed activities; and (2) although tactile testing was not conducted and olfactory testing was not completed in its entirety, the licensed operators had been observed successfully manipulating control knobs and handles by licensee and NRC personnel, and only the products of combustion portion of the olfactory testing was missed. Nonetheless, this violation demonstrates the importance of taking all of the necessary steps and conducting all of the necessary reviews to assure that information submitted to the NRC is complete and accurate in all material respects.

Although this violation has been placed in your corrective action program, a Notice of Violation is being issued and a response is being required for the NRC to better understand: (1) what actions were taken in 2004 in response to NRC Information Notice (IN) 2004-20, "Recent Issues Associated with NRC Medical Requirements for Licensed Operators," which, in part, reminded facility licensees that licensed operators and the personnel who perform and interpret their medical examinations need to be familiar with the regulatory requirements and guidelines (it should be noted that this IN specifically described an instance in which a facility licensee had not conducted some tests required in the ANSI standard for any of its licensed operators); (2) why appropriate action was not taken in response to IN 2004-20 to identify the lack of olfactory and tactile testing; and (3) the corrective actions taken and planned at this time to assure all information submitted to the NRC is complete and accurate in all material respects.

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

J. Davis

-3-

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 Agencywide Documents Access and Management 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. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 information, 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).

Should you have any questions, please contact Mr. Hironori Peterson, Chief, Operations Branch, at (630) 829-9707.

Sincerely,

/RA by Kenneth G. O'Brien Acting for/

Anne T. Boland, Director
Division of Reactor Safety

Docket No. 50-341
License No. NPF-43

Enclosure:
Notice of Violation

cc w/encl: Distribution via ListServ

Letter to Mr. Jack M. Davis from Ms. Anne T. Boland dated January 15, 2010

SUBJECT: FERMI POWER PLANT, UNIT 2 – NOTICE OF VIOLATION
NRC INSPECTION REPORT NO. 05000341/2009011(DRS)

DISTRIBUTION:

ADAMS (PARS)

RidsSecyMailCenter.Resource

OCADistribution

Bill Borchardt

Bruce Mallett

Roy Zimmerman

Belkys Sosa

Marvin Itzkowitz

Catherine Scott

Eric Leeds

Bruce Boger

Mark Satorius

Cynthia Pederson

Daniel Holody

Carolyn Evans

Steven Orth

William Jones

Gerry Gulla

Marcy Ann Ashley

Holly Harrington

Hubert Bell

Cheryl McCrary

Mona Williams

James Lynch

Viktoria Mitlyng

Prema Chandrathil

Harral Logaras

Jared Heck

Allan Barker

Patricia Lougheed

Paul Pelke

Magdalena Gryglak

OEMAIL Resource

OEWEB Resource

Susan Bagley

RidsNrrPMPrairieIsland

RidsNrrDorLp3-1 Resource

RidsNrrDirslrib Resource

Carole Ariano

Linda Linn

DRPIII

DRSIII

ROPreports Resource

NOTICE OF VIOLATION

Detroit Edison Company
Fermi 2

Docket No. 50-341
License No. NPF-43
EA-09-267

During an NRC inspection conducted on August 14 through October 23, 2009, a violation of U.S. Nuclear Regulatory Commission (NRC) requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the Code of Federal Regulations (10 CFR) 50.9 requires, in part, that information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, Orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

Title 10 of the Code of Federal Regulations 55.21 requires, in part, that an applicant for a license shall have a medical examination by a physician and the licensee shall have a medical examination by a physician every two years. The physician shall determine that the applicant or licensee meets requirements of Section 55.33(a)(1).

Title 10 of the Code of Federal Regulations 55.33(a)(1) requires, in part, that applicants medical condition and general health will not adversely affect the performance of assigned operator job duties or cause operational errors endangering public health and safety.

Title 10 of the Code of Federal Regulations 55.23 requires, in part, that to certify the medical fitness of the applicant, an authorized representative of the facility licensee shall complete and sign NRC Form-396, "Certification of Medical Examination by Facility Licensee."

NRC Form-396, when signed by an authorized representative of the facility licensee, certifies that a physician conducted a medical examination of the applicant and that the guidance contained in American National Standards Institute/American Nuclear Society (ANSI/ANS) Standard 3.4-1976, "Medical Certification and Monitoring of Personnel Requiring Operator Licenses for Nuclear Power Plants" was followed in conducting the examination and making the determination of medical qualification.

ANSI/ANS 3.4-1976, Section 5.4 provides specific minimum capacities required for medical qualifications. Section 5.4.2, requires, "Ability to detect odor of products of combustion." Section 5.14 requires, "Tactile discrimination sufficient to distinguish among various shapes of control knobs and handles by touch."

Contrary to the above, from May 1999 until August 13, 2009, the facility licensee provided information to the NRC that was not complete and accurate in all material respects. Specifically, the facility licensee had not completed medical examinations of licensed operators in accordance with ANSI/ANS 3.4-1976. The licensee submitted

ENCLOSURE

numerous NRC Form-396s for renewal of senior reactor operator and reactor operator licenses and for initial license applicants that certified that the applicants met the medical requirements of ANSI/ANS 3.4-1976 when, in fact, olfactory (combustion product odor) and tactile testing had not been conducted.

This is a Severity Level IV violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Detroit Edison Company is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 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-09-267" 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; 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 Agencywide Documents Access and management 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 15th day of January 2010

ENCLOSURE

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 Agencywide Documents Access and Management 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. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 information, 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).

Should you have any questions, please contact Mr. Hironori Peterson, Chief, Operations Branch, at (630) 829-9707.

Sincerely,
/RA by Kenneth G. O'Brien Acting for/
 Anne T. Boland, Director
 Division of Reactor Safety

Docket No. 50-341
 License No. NPF-43

Enclosure:
 Notice of Violation

cc w/encl: Distribution via ListServ

DISTRIBUTION:
 See next page

FILE NAME: G:\EICS\ENFORCEMENT\Enforcement Cases 2009\EA-09-267 Fermi OL\FINAL EA-09-267 Fermi OL FINAL letter NOV (3).doc

Publicly Available Non-Publicly Available Sensitive Non-Sensitive

To receive a copy of this document, indicate in the box: "C" = Copy w/o att/encl "E" = Copy w/att/encl "N"

OFFICE	RIII	RIII	D: OE	RIII	RIII
NAME	Pelke	McNeil for Peterson	Gulla for Zimmerman ¹	Lougheed for Orth	O'Brien for Boland
DATE	01/14/10	01/15/10	01/12/10	01/15/10	01/15/10

OFFICIAL RECORD COPY

¹ OE concurrence per e-mail from G. Gulla dated 01/12/10.