



# Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

May 25, 2012

Charles A. Casto, Regional Administrator  
U.S. Nuclear Regulatory Commission  
Region III  
2443 Warrenville Road, Suite 210  
Lisle, IL 60532-4352

**Subject: FENOC VIOLATING FEDERAL REGULATIONS (AGAIN)**

Dear Mr. Casto:

By letter dated December 2, 2011, NRC Region III issued Confirmatory Action Letter (CAL) No. 3-11-001 to FirstEnergy Nuclear Operating Company (FENOC) regarding commitments related to cracking identified in the reinforced concrete shield building at Davis-Besse (ADAMS ML11336A355). The first commitment listed in this CAL stated:

“FENOC will provide the results of the root cause evaluation and corrective actions to the NRC, including any long-term monitoring requirements, by February 28, 2012.”

By letter dated February 27, 2012, FENOC submitted a root cause evaluation to the NRC (ADAMS ML120600056).

By letter dated May 14, 2012, FENOC submitted to the NRC a revised root cause assessment prepared by its contractor (ADAMS ML12138A037). In the first paragraph of this letter, FENOC stated:

“Following this submittal [of the root cause evaluation on February 27, 2012], during on-site NRC inspection activities, observations were identified with the content of both the FENOC Root Cause Analysis Report as well as the contractor root cause assessment report used to develop the FENOC Root Cause Analysis Report.”

By letter dated May 16, 2012, FENOC submitted to the NRC a revised root cause evaluation (ADAMS ML12142A053). The first paragraph of this letter also repeated, verbatim, the sentence quoted above.

Federal regulation §50.9, Completeness and accuracy of information, requires:

“(a) 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.”

FENOC conceded violating this federal regulation by submitting information pursuant to a Confirmatory Action Letter that was incomplete and/or inaccurate. That this information was incomplete and inaccurate in material respects was again conceded by FENOC when it stated the problems were discovered during on-site NRC inspection activities. Had the information been deemed by the NRC to either be complete and accurate or be incomplete/inaccurate but immaterial during its inspections, the re-submittals of the root cause assessment and root cause evaluation would not have been necessary. The re-submittals under these circumstances constitute *prima facie* evidence that FENOC violated §50.9.

Alternatively, FENOC own efforts could have identified the incomplete and/or inaccurate information. The federal regulation would still have been violated, but some credit might be warranted for it having been self-identified and corrected.

That does not seem to be the case here. It took NRC efforts to identify the incomplete/inaccurate information and compel its correction. This violation of §50.9 is especially disconcerting because of FENOC’s bad track record. For example, by letter dated January 28, 2004, the NRC informed FENOC that its inspections determined (ADAMS ML040280594):

“The response [submitted by FENOC] dated November 11, 1998, failed to provide complete and accurate information concerning protective coating deficiencies and foreign material in containment.”

By letter dated February 27, 2004, FENOC acknowledged this violation of federal regulations (ADAMS ML040620456). On pages 4 and 5 in Attachment 1 to this letter, FENOC stated:

“FENOC took the following actions to ensure future compliance with 10 CFR 50.9 at the DBNPS:

- Issued a new company policy stressing the requirements for complete and accurate information,
- Provided training to personnel on the need for ensuing information is complete and accurate,
- Established training for new supervisors and employees, which includes responsibilities under 10 CFR 50.9 for complete and accurate information, and
- Issued a new procedure governing validation, review, and approval of correspondence with the NRC.”

These corrective actions – if actually taken – failed to achieve sustained effectiveness.

That the NRC inspectors uncovered and revealed the incomplete and/or inaccurate information in FENOC's root cause evaluation and assessment reflects well upon the agency. The NRC did not take the submitted information for granted but instead took steps to verify it. Those steps identified the problems corrected by the re-submittals. But NRC inspectors should not figure prominently in the establishment of complete and accurate information. §50.9 clearly places that burden exclusively on the shoulders of the licensees. In this case, FENOC violated §50.9.

We look forward to the NRC taking enforcement action<sup>1</sup> against FENOC for having once again violated federal regulations that require it to provide complete and accurate information to the NRC.

Sincerely,

A handwritten signature in black ink that reads "David A. Lochbaum". The signature is written in a cursive, flowing style.

David Lochbaum  
Director, Nuclear Safety Project  
PO Box 15316  
Chattanooga, TN 37415  
(423) 468-9272, office  
(423) 488-8318, cell

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<sup>1</sup> This letter is expressly NOT a request per 10 CFR 2.206 for the NRC to take enforcement action against FENOC. If NRC won't take the necessary enforcement action clearly warranted by the facts in this case, our 2.206 petition won't alter that inaction.