

April 29, 2014

IA-13-064

Daniel Wilson
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: NOTICE OF VIOLATION AND ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES (NRC Office of Investigations Report
No. 1-2012-036)

Dear Mr. Wilson:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC) enforcement decision for apparent violations identified during an investigation by the NRC's Office of Investigations (OI) conducted between March 30, 2012, and March 26, 2013, at the Entergy Nuclear Operations (ENO), Indian Point Energy Center (IP). The investigation was conducted to determine if you, while employed as the IP Chemistry Manager, deliberately entered false data into a Chemistry database pertaining to an emergency diesel generator (EDG) fuel oil storage tank (FOST) and the reserve fuel oil storage tank (RFOST). Per the IP Technical Specifications (TS), the fuel oil is sampled nominally every 92 days and analyzed to determine if it is within limits for specified parameters, including total particulate concentration. If the particulate concentration is above the stated limit, it must be restored to below the limit within seven days for an FOST, or 30 days for the RFOST; otherwise, ENO must immediately declare the associated EDGs inoperable. For the RFOST, all the EDGs would be declared inoperable, which would require ENO to shutdown both operating units.

Based on the OI investigation, the NRC determined that you committed multiple examples of an apparent violation (AV) of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.5, in that you deliberately: (a) caused ENO to remain in violation of the TS Limiting Condition for Operation for the RFOST and 22 FOST for longer than it would have had you taken the appropriate action of informing IP Operations; and, (b) provided to ENO incomplete and inaccurate information that was material to the NRC by entering false data into the chemistry database and/or related condition reports to indicate that the RFOST and the 22 FOST had been resampled, and the results had been within TS limits when, in fact, resamples had not been taken.

By letter dated December 18, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13354B860), the NRC described the AV and informed you that the NRC was considering escalated enforcement action against you. In the letter, we also offered you the opportunity to discuss the AV during a pre-decisional enforcement conference (PEC) or to engage the NRC in an alternative dispute resolution (ADR) mediation session or to provide a written response before we made our enforcement decision.

In a December 27, 2013, telephone call with Mauri Lemoncelli, the NRC Acting Deputy Assistant General Counsel, your attorney informed the NRC that you neither required a PEC or an ADR mediation session, nor intended to submit a written response, but you were willing to cooperate with the NRC. Accordingly, based on the information developed during the investigation, the NRC has determined that the violation examples occurred as described below.

Specifically, during a self-assessment conducted in January/February 2012 to prepare for an upcoming NRC Component Design Bases Inspection, ENO staff at IP reviewed the EDG fuel oil delivery systems and storage tanks. The IP self-assessment team identified that: (1) results of RFOST samples taken on June 17, 2011, and December 1, 2011, were not entered into the Chemistry Department database until July 14, 2011, and January 23, 2012, respectively; and (2) although both samples exceeded the TS particulate limits, no condition reports (CRs) had been written to document the issues and notify site operations and, evidently, no re-sampling performed to confirm that the oil had been restored to below the limit within the 30-day allowed outage time.

On February 2, 2012, the IP self-assessment team inquired of Chemistry department staff, including you, about this issue. Subsequently, on February 5, 2012, you entered information in the Chemistry database indicating that re-samples for the June 17, 2011, and December 1, 2011, RFOST samples had, in fact, been performed on June 29, 2011, and December 9, 2011, respectively (i.e., within the 30 day period allowed by TS), and that the re-samples were below the TS particulate limit. However, during the OI investigation, you admitted to OI that the re-samples had actually not been obtained. You informed OI that you had entered false values in the database instead of documenting the issue in a CR or otherwise informing the IP Operations Department that the site was operating in violation of its TS. You also admitted that you similarly entered false re-sample data for the IP 22 EDG FOST after identifying that the TS particulate limit had been exceeded for a November 18, 2011, sample taken from that tank. Namely, on February 6, 2012, you entered data to indicate that a resample had been performed on December 7, 2011, and that the resample was below the TS particulate limit.

You testified to OI that you entered the false values because you believed the original sample results were incorrect as a result of poor IP Chemistry Department sampling practices. Namely, the samples had been obtained from the bottom of the RFOST and shipped in a tin-coated can; both practices that were specifically not recommended by newer industry guidance because sediment could collect at the bottom of the tank and the tin coating could contaminate the samples. You said that you did not report the out-of-specification results because you wanted more time to prove your theory and incorporate new test methods, and you did not want the plant to shut down when you did not believe it really needed to do so.

Your actions deliberately: (1) caused ENO to operate IP Units 2 and 3 in violation of their TS requirements for a longer period than if you had written a CR (or otherwise notified the IP Operations Department of the issue); and (2) prevented ENO from informing the NRC of this TS-prohibited condition, in violation of 10 CFR 50.73. After careful consideration, the NRC concluded that these violations by ENO should be classified at Severity Level III (SL III). In reaching this determination, the NRC considered that the underlying technical findings would have been evaluated as having very low safety significance (i.e., green) under the Reactor Oversight Process because the higher fuel oil particulate concentration would not have impacted the ability of the EDGs to fulfill their safety function. Specifically, the TS limit is

conservative and the IP EDGs utilize two sets of filters on the fuel oil booster pump, which alarm on high differential pressure, and IP staff could have changed the filters as needed without interrupting EDG operation. Pursuant to Section 2.2.4(b) and (c) of the Enforcement Policy, the violations associated with these findings are evaluated using traditional enforcement and would have been best categorized at SL IV, absent willfulness. However, the NRC decided to increase the significance of these violations, in accordance with Section 2.2.1(d) of the Enforcement Policy. Willful violations are of particular concern because the NRC's regulatory program is based, in part, on licensees and their employees acting truthfully and with integrity. In consideration that the violations were directly related to each other and were both caused by your deliberate actions, the NRC has categorized the violations collectively as a single SL III problem. A copy of the letter and Notice of Violation issued to ENO is provided as Enclosure 1.

Your actions also placed you in violation of 10 CFR 50.5, "Deliberate Misconduct." Given the significance of the underlying issue and the deliberate nature of your actions, your individual violation has been categorized in accordance with the NRC Enforcement Policy at SL III, and is set forth in the enclosed Notice of Violation (Enclosure 2). Since you are no longer employed by ENO or any other NRC licensee to our knowledge, you are not required to respond to the Notice of Violation at this time. However, should you seek employment with an NRC licensee in the future, you are required, pursuant to the provisions of 10 CFR 2.201, to submit a written response. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In determining the appropriate enforcement action for this violation, the NRC considered that you held a position as a licensee official, as defined in the NRC Enforcement Policy, and, as such, were expected to understand the importance of TS and to abide by such requirements. The NRC also noted that you took measures to attempt to conceal your actions (such as entering the false data under the name of another Chemistry employee), and that you did not cooperate with ENO's investigation into this matter. However, the NRC also considered that, as an outcome of the NRC investigation, the U.S. Department of Justice prosecuted you for your actions and you have been convicted of a felony crime and were sentenced to 18 months of probation and charged \$600 in fines and fees. Given your position, for this type of violation, the NRC would typically have banned you from engaging in licensed activities for a period of at least three years, because your actions have resulted in the loss of reasonable assurance that you may be relied upon, at this time, to comply with NRC requirements. However, after careful consideration of the factors listed above, the NRC has decided that its civil action against you would include an Order, set forth in Enclosure 3, prohibiting your involvement in NRC-licensed activities for one year.

You or any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the *Federal Register*. Please see the enclosed Order for further instructions. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of the

enclosed Order shall be subject to criminal prosecution as set forth in that section. Violation of the enclosed Order may also subject the person to civil monetary penalty.

You may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue. This request must be made within 30 days of the issuance date of the Notice. 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 is mediation. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution at Cornell University has agreed to facilitate NRC's program as an intake neutral.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your responses will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide 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 responses 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 (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Sincerely,

/RA/

Roy P. Zimmerman
Director, Office of Enforcement

Enclosures:

1. NRC Letter and Notice of Violation to Entergy
2. Individual Notice of Violation
3. Order
4. NUREG/BR-0317

cc: State of New York

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