



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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

September 1, 2016

IA-16-039

Mr. Franklin D. Hayden, Jr.  
[HOME ADDRESS DELETED]  
[UNDER 10 CFR 2.390(a)]

SUBJECT: NOTICE OF VIOLATION AND SUMMARY OF NRC INVESTIGATION REPORT  
NO. 3-2015-009)

Dear Mr. Hayden:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) Office of Investigation (OI) investigation completed on January 29, 2016, regarding your activities at FirstEnergy Nuclear Operating Company's Davis-Besse Nuclear Power Station. Based on the evidence collected, the investigation concluded that you failed to meet a condition of your operator license, and deliberately provided inaccurate information to the licensee involving required medical updates. A Factual Summary of the OI investigation is included as Enclosure 1 to this letter.

Based on the results of this investigation, the NRC determined that two deliberate violations of NRC requirements occurred as a direct result of your actions. The violations are cited in the enclosed Notice of Violation (Notice) (Enclosure 2). The first violation involved your deliberate failure to follow licensed operator requirements in Title 10 of the *Code of Federal Regulations* (CFR) 55.53(l), which requires that a licensee (you) shall comply with any other conditions that the Commission may impose to protect health or to minimize danger to life or property. Your operator license was conditioned to state, in part, that you shall take medication as prescribed to maintain medical qualifications. On multiple occasions between January 2013, and July 30, 2014, you failed to take medication as prescribed by your personal physician, stood watch as either the At-the-Controls operator or the Balance-of-Plant operator, and thereby failed to meet the condition of your operator's license, while actively performing the functions of a licensed operator as defined in 10 CFR Part 55.

The second violation involved your deliberate failure to provide the facility licensee with information that was complete and accurate in all material respects for the submittal of required updates on the operator's medical condition. Title 10 CFR 50.5(a)(2) states, in part, that an employee of a licensee may not deliberately submit to the NRC or a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. On multiple occasions, between January 25, 2013 and July 10, 2014, you knowingly provided incomplete or inaccurate information regarding your medical condition when you signed the review form indicating that the NRC Form 396, submitted by the facility licensee, was accurate and complete. This information was material to the NRC because the information directly influenced the NRC's licensing decisions concerning the medical qualification conditions imposed on your license.

Given the significance of the underlying issues, and the deliberate nature of your actions, these violations collectively were categorized in accordance with the NRC Enforcement Policy as a Severity Level III problem. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. Furthermore, your actions placed the Davis-Besse Nuclear Power Station in violation of 10 CFR 50.9(a) for providing inaccurate information to the NRC in medical update forms provided to the NRC. Enclosure 3 (ADAMS Accession Number ML16245A488) includes a copy of the letter and Order issued to the Davis-Besse Nuclear Power Station.

Once the Davis-Besse Nuclear Power Station identified that you were not taking medications prescribed by your physician and that you had falsified a medical update form they implemented corrective actions that included: (1) placing your operator's license on administrative hold while it conducted an investigation; (2) removing you from watch standing and performing licensed duties while it conducted an investigation; (3) subsequently terminating your operating license at the Davis-Besse Nuclear Power Station; and (4) terminating your access to the Davis-Besse facility.

The NRC concluded that information regarding the reason for the violations, and the corrective actions to correct the violations and prevent recurrence are already addressed above. Therefore, you are not required to respond to this letter unless the description in this letter does not accurately reflect the corrective actions or your position. In that case, if you choose to provide additional information, you should follow the instructions specified in the Notice. If you decide to provide additional information, it should be sent to the NRC within 30 days of the date of this letter. In addition, after 45 days from the date of this letter, a copy of this letter and enclosure 1 and 2 will be made available to the public, unless you provide a sufficient bases to withdraw the violations.

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 Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, unless you provide a sufficient basis to withdraw the violations within the 30 days specified above for responding to this NOV. 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.

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>.

F. Hayden, Jr.

- 3 -

If you have any questions concerning this matter, please contact Mr. Robert Orlikowski of my staff at 630-829-9834.

Sincerely,

***/RA by Darrell J. Roberts acting for***

Cynthia D. Pederson,  
Regional Administrator

Docket No. 55-33579  
License No. OP-31551

Enclosures:

1. Factual Summary of NRC Investigation
2. Notice of Violation
3. Letter and Order issued to Davis-Besse Nuclear Plant

## FACTUAL SUMMARY OF OFFICE OF INVESTIGATIONS REPORT 3-2015-009

On February 9, 2015, the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI), Region III Field Office, initiated an investigation to determine whether a licensed reactor operator at the Davis-Besse Nuclear Power Station deliberately failed to comply with a condition of his license and to report a change in a medical condition. The NRC completed its investigation on January 29, 2016.

The licensed reactor operator received his reactor operator license in January 2012. Pursuant to 10 CFR 55.33(b), the license included conditions to take all medications as prescribed by the licensed operator's physician to maintain medical qualifications and to wear corrective lenses when performing licensed duties. In March 2012, the NRC amended the operator's license to include a condition to provide 3-month updates to the NRC on his medical condition, prognosis, treatment, and ability to perform licensed activities. The operator was taking two medications to control diabetes at the time the original license was issued.

The operator indicated that part of his initial operator training included reporting of an individual's medical issues. The operator also stated that he received additional training on several occasions since receiving his license. The additional training sessions stressed the importance of reporting all new medications that were prescribed, including any changes in medications or discontinuance of any medications. The operator indicated during his interview that he understood the condition of his license, as well as the need to report any changes in medication to the licensee's health center.

In January 2013, the operator's personal physician prescribed the operator a blood pressure medication. On January 2, 2013, the operator filled the prescription, obtaining a 3-month supply. The operator's pharmaceutical record indicates that he did not refill the prescription and in August 2013, during a doctor's appointment, the operator's blood pressure was again elevated. The operator indicated that in August 2013, he notified the Davis-Besse Health Center by telephone that he had been prescribed the blood pressure medication. In October of 2013, the operator's physician increased the dosage of the medication because the operator's blood pressure was still elevated. In November 2013, the operator filled the prescription for the higher dose. He stated that he stopped taking the medication at some point in either November or December of 2013 because it caused side effects. He informed his physician on January 31, 2014 that he had stopped taking the medication, at which point his physician approved the cessation.

In January of 2014, the operator's physician prescribed a third medication for controlling his diabetes. The operator stated he notified the Davis-Besse Health Center of this additional medication he was taking. The operator filled the prescription on January 31 for a 1-month supply and then refilled the prescription again on March 1 with a 1-month supply. The operator also indicated that due to the high cost of the medicine, he stopped taking the third diabetes medication and notified his physician on April 30, 2014.

On July 10, 2014, the operator signed a compliance package used to generate the required Form 396 stating that he was taking his medications as prescribed. The "explanation" section of the compliance package listed all four of the medications that the operator's physician had prescribed. Despite the fact that he was no longer taking two of the listed medications, the operator signed the compliance package. Davis-Besse submitted the status report required by the additional condition of the operator's license on July 11, 2014. The status report indicated that the operator was taking all of the medications prescribed. However, he was not actually taking all of them.

In the licensee's internal investigation, the operator stated that he mentioned to a licensee Regulatory Compliance staff member that the medications were not correct, but was under the impression there was not time to correct the form before it was due. The operator stated that he signed the form with the intentions of getting the medication list corrected later. A review of the NRC 396 Forms submitted quarterly by the facility licensee was conducted for 2013 and 2014. This review determined that NRC 396 Forms submitted by the facility licensee on February 6, 2013, October 18, 2013, and February 17, 2014, also contained inaccurate information regarding the prescribed medications listed on the Form 396 and the actual medications taken by the operator at the time the forms were submitted.

On July 31, 2014, the operator completed a physical and noted that he was taking only two medications. The medical center questioned the operator as to why he was not taking the two additional medications listed on his medical record. The operator stated that he was surprised by the questioning, because he believed he had informed the medical center that he was no longer taking the two medications in question. However, there is no record that he informed the Health Center.

Based on the evidence gathered in the OI investigation, it was determined that on multiple occasions between January 2013 and July 30, 2014, an individual performed the function of a licensed reactor operator without complying with a condition imposed on his operator's license requiring him to take medication as prescribed. Specifically, on multiple occasions during that period the operator engaged in licensed activities by standing watch as at-the-controls operator or balance-of-plant operator having failed to take medication as prescribed by his personal physician. This violated 10 CFR 55.53(l) that requires a licensed operator to comply with any other conditions that the commission may impose to protect health or to minimize danger to life or property.

Based on the evidence gathered in the OI investigation, it appears a licensed reactor operator deliberately provided false information to the facility licensee. This inaccurate information was used by the facility licensee to complete medical update forms that were submitted to the NRC. Specifically, the operator deliberately provided inaccurate information by signing the forms attesting to the accuracy of the document listing the prescription medication he was taking when he knew the list was inaccurate. The information in the document was material to the NRC because it provided the basis for the operator's medical qualification. Therefore, the operator violated Title 10 CFR 50.5(a)(2) that requires, in part, that an employee of a licensee may not deliberately submit to the licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. His actions also caused the facility licensee to be in violation of 10 CFR 50.9(a).

## NOTICE OF VIOLATION

Mr. Franklin D. Hayden, Jr.  
[HOME ADDRESS DELETED]  
[UNDER 10 CFR 2.390(a)]

Docket No. 55-33579  
License No. OP-31551  
IA-16-039

During a Nuclear Regulatory Commission (NRC) investigation completed on January 29, 2016, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 55.3 requires that a person must be authorized by a license issued by the Commission to perform the function of an operator or senior operator as defined in this part.

10 CFR 55.33(b) requires, in part, that if an applicant's general medical condition does not meet the minimum standards under 10 CFR 55.33(a)(1), the Commission may approve the application and include conditions in the license to accommodate the medical defect.

10 CFR 55.53(l) states that a licensee (licensed operator) shall comply with any other conditions that the Commission may impose to protect health or to minimize danger to life or property.

Operator license number OP-31551 was conditioned to state, in part, that you, as a licensed operator shall take medication as prescribed to maintain medical qualifications.

Contrary to the above, between January 2013 and July 30, 2014, you, as a licensed operator performed the function of an operator as defined in 10 CFR Part 55 without complying with a condition imposed on your license that requires you to take medications as prescribed. Specifically, on multiple occasions you engaged in licensed activities by standing watch as either the At-the-Controls operator or the Balance-of-Plant operator and failed to take medication as prescribed by your personal physician.

- B. 10 CFR 50.5(a)(2) states, in part, that an employee of a licensee may not deliberately submit to the NRC or a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

10 CFR 55.53(l) requires a licensee to comply with any conditions that the Commission may impose to protect health or to minimize danger to life or property.

Operator license number OP-31551 is conditioned to require, in part, that the licensed operator submit a status report concerning your medical condition to include the prognosis, treatment, and your ability to perform licensed duties three months from the date of this amendment.

10 CFR 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. When the certification requests a conditional license based on medical evidence, the medical evidence must be submitted on NRC Form 396 to the Commission.

Contrary to the above, during the period from January 25, 2013 through July 10, 2014, you, as a licensed operator deliberately submitted to the facility licensee information that you knew was inaccurate in some respect material to the NRC. Specifically, on at least four occasions you knowingly provided inaccurate information regarding the medications listed on the NRC Form 396, submitted by the facility licensee to the NRC, and the prescribed medications you were actually taking. This information was material to the NRC because the information directly influences the NRC's licensing decisions concerning medical qualification conditions imposed on your license.

This is a Severity Level III problem (Sections 6.4 and 6.9).

The NRC has concluded that information regarding the violations, is already adequately addressed on the docket in the NRC letter transmitting this Notice of Violation (Notice). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; IA-16-039," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 0001, with a copy to the Regional Administrator, Region III, Suite 210, 2443 Warrenville Road, Lisle, Illinois 60532 within 30 days of the date of the letter transmitting this Notice.

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.

If you choose to respond, 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>, unless you provide a sufficient basis to withdraw these violations within the 30 days specified above for a response to this NOV. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Dated this 1st day of September, 2016.

F. Hayden

- 3 -

If you have any questions concerning this matter, please contact Mr. Robert Orlikowski of my staff at 630-829-9834.

Sincerely,

**/RA by Darrell J. Roberts acting for/**

Cynthia D. Pederson,  
Regional Administrator

Docket No. 55-33579  
License No. OP-31551

Enclosures:

1. Notice of Violation
2. Factual Summary of NRC Investigation
3. Letter and Order issued to Davis-Besse Nuclear Plant

**DISTRIBUTION:**

RidsOemailCenter

P. Holahan

N. Hilton

R. Fretz

G. Gulla

R. Carpenter

D. Muller

M. Scheetz

K. O'Brien

J. Cameron

R. Orlikowski

R. Skokowski

S. Langan

M. Zerth

L. Casey

K. Lambert

J. Heller

<b>OFC</b>	RIII-EICS	RIII-DRS	RIII-DRS	OGC	OE	RIII-EICS	RIII-ORA
<b>NAME</b>	KLambert:jc	ROrlikowski	KO'Brien	JMartin <sup>1</sup>	PHolahan <sup>1</sup>	RSkowski	CPederson
<b>DATE</b>	08/09/16	08/10/16	08/10/16	08/30/16	08/30/16	08/31/16	09/01/16

OFFICIAL RECORD COPY

<sup>1</sup> OGC concurrence received by R. Carpenter on August 30, 2016.

<sup>1</sup> OE concurrence received by G. Gulla on August 30, 2016.