

November 23, 2005

EA-05-171

Mr. M. Nazar
Senior Vice President and
Chief Nuclear Officer
Indiana Michigan Power Company
Nuclear Generation Group
One Cook Place
Bridgman, MI 49106

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$60,000 (NRC INSPECTION REPORT NO. 05000315/2005-006(DRS);
05000316/2005-006(DRS)) DONALD C. COOK NUCLEAR PLANT,
UNITS 1 AND 2

Dear Mr. Nazar:

This letter refers to an inspection conducted from April 18 to August 26, 2005, by the U.S. Nuclear Regulatory Commission (NRC) at the Donald C. Cook Nuclear Plant, Units 1 and 2 (CNP). The purpose of the inspection was to review your reactor operator licensing program. The inspection also included a review of the corrective actions undertaken by the Indiana Michigan Power Company (I&M), the CNP facility licensee, as described in an August 2, 2004, letter to the NRC, for a previous Severity Level III violation (EA-04-109) issued by the NRC on September 29, 2004. The previous Severity Level III violation concerned I&M's failure to notify the NRC within 30 days after an NRC-licensed operator developed a permanent disability or illness, and failure to provide the NRC with complete and accurate information about the operator's medical condition. As a result of the April 18 to August 26, 2005, inspection, the NRC identified several apparent violations of NRC requirements associated with I&M's failure to: (1) provide complete and accurate information regarding corrective actions for a previous Severity Level III violation (EA-04-109); (2) notify the NRC within 30 days of NRC-licensed operators experiencing a permanent disability or illness; and (3) provide complete and accurate information concerning the medical condition of individuals on new, renewed, or amended NRC reactor operator license applications. Details regarding each of these apparent violations were provided in NRC Inspection Report No. 05000315/2005006(DRS); 05000316/2005006(DRS), dated September 2, 2005.

In the letter transmitting the inspection report, we provided you the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference (PEC) or by providing a written response before we made our final enforcement decision. You declined the opportunity to discuss this matter at a PEC, and on October 10, 2005, provided a written response to the apparent violations.

Based on the information developed during the inspection and the information provided in the October 10, 2005, written response to the inspection report, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. In summary, we determined that I&M provided: (1) incomplete and inaccurate information in an August 2, 2004, letter that described corrective actions for a previous Severity Level III violation; (2) untimely information with regard to the medical status of NRC-licensed reactor operators; and (3) incomplete and inaccurate information with regard to three applications for new, renewed, or amended NRC-licensed reactor operator licenses.

Relative to the first example, we determined that the August 2004 letter to the NRC, which described I&M's corrective actions for an apparent Severity Level III violation identified in a July 2, 2004, inspection report, contained incomplete and inaccurate information that was material to the NRC, and was a violation of 10 CFR 50.9. Specifically, the August 2, 2004, response documented that CNP: (1) conducted "a 100% review (self-assessment) of all operator medical records" and conducted "a complete review of all medical records for all current license holders" during February and March 2004; and (2) did not identify medical records for NRC-licensed operators that would require the individual's license to include a restriction. However, during the April 18 to August 26, 2005, NRC inspection, an NRC inspector and the CNP staff identified medical records for three NRC-licensed individuals which indicated that the NRC licenses for these individuals should be restricted. In each case, the inspector or member of your staff determined that the information that would precipitate the NRC's issuance of a license restriction for the individual was present in the individual's medical files prior to and at the time of CNP's February and March 2004 review of the NRC-licensed operator's medical records. The incomplete and inaccurate information included in the August 2, 2004, letter was material to the NRC because the NRC subsequently placed restrictions on the reactor operator licenses once it obtained the relevant information on the license holders' medical condition, and because we relied, in part, on this information in determining the appropriate enforcement action to take relative to the apparent Severity Level III violation (EA-04-109) that was ultimately issued to I&M on September 29, 2004.

With regard to the second example, we determined that the medical records for two NRC-licensed reactor operators included information which indicated that they were diagnosed with chronic pulmonary disease in November 1998 and January 2003, respectively. However, I&M failed to notify the NRC, as required by 10 CFR 55.25 and 50.74, of permanent disabilities or illnesses associated with individual's chronic pulmonary disease, conditions that may have required the NRC to include a restriction in the individuals' NRC-licenses. Specifically, CNP did not notify the NRC of these conditions and request the appropriate license restrictions until May 2005 for the two cases, a period of time well in excess of the 30-day notification period. This resulted in a violation of 10 CFR 55.25 and 50.74.

Relative to the third example, we determined that I&M submitted applications, which included NRC Form 396s dated November 4, 2002, April 26, 2004, and May 5, 2004, for a new, renewed, and amended SRO licenses that did not describe an individual's recently diagnosed

need to wear corrective lenses or two other individual's chronic pulmonary disease conditions. As of result of I&M's failure to include the information on the NRC Form 396s, the NRC issued new, renewed, and amended SRO licenses to these individuals in December 2002, April 2004, and May 2004 which did not include the required restrictions. The omitted medical information is material to the NRC because had the NRC been aware of the information at the time the applications were submitted, the NRC would have included restrictions on each of the licenses. The NRC subsequently placed restrictions on the aforementioned reactor operator licenses once it obtained the relevant information on the license holders' medical condition. The facility licensee's failure to include all of the relevant information on the NRC Form 396s submitted as a part of these license applications is a violation of 10 CFR 50.9.

Reactor operators licensed by the NRC are entrusted with safe operation of a nuclear reactor and must be capable of performing their assigned duties under normal, abnormal, and emergency operating conditions of the plant. The physical condition and general health of reactor operators are significant concerns of the NRC and are monitored to ensure that any sudden incapacitation of an operator due to an existing medical condition does not pose undue risk to the facility. Therefore, the NRC places restrictions on an operator's NRC-license for certain medical conditions to ensure that the facility licensee implements adequate compensatory measures for the underlying medical condition. By I&M not informing the NRC of an operator's physical condition, the NRC was unable to ensure that the facility licensee was required to and properly implemented compensatory restrictions for the medical conditions. Additionally, I&M's failure to provide complete and accurate information in the August 2, 2004, letter in response to the July 2, 2004, inspection report is also a significant concern because the NRC used that information, in part, to determine the appropriate enforcement action for the associated Severity Level III violation (EA-04-109). Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 was considered for this Severity Level III problem.

Because CNP has been the subject of escalated enforcement actions within the last two years,¹ the NRC considered whether credit is warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the "Enforcement Policy." Credit is not warranted for the *Identification* factor because the NRC identified the violations and I&M had prior opportunity to identify the violations: (1) as a result of the February and March 2004 review of NRC-licensed operator medical records, (2) while preparing the August 2, 2004, letter to the NRC, and (3) when taking corrective actions as a result of the previous Severity Level III Notice of Violation issued on September 29, 2004.

¹ A Severity Level III violation without civil penalty was issued on September 29, 2004, (EA-04-109) for a similar violation associated with the failure to notify the NRC of a senior reactor operator's permanent medical condition and the failure to provide complete and accurate information to the NRC about that operator's permanent medical condition.

Credit is warranted for the *Corrective Action* factor. I&M's corrective actions included, but were not limited to: (1) developing guidance for the submission of NRC Forms 396 and 398 and incorporating that guidance in administrative procedures; (2) revising administrative procedures to discuss regulatory requirements with the medical review officer prior to performing the annual medical records review; (3) revising procedures to require the Regulatory Affairs Department to review completed physical examinations, for inclusion in license applications, and any change in medical condition by a licensed operator; and (4) training operators on the requirements to report a change in medical condition. Therefore, to emphasize the importance of accurate and complete information, prompt identification of violations, and in recognition of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$60,000 for the Severity Level III problem.²

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report No. 05000315/2005006(DRS); 05000316/2005006(DRS) and in I&M's October 10, 2005, letter. Therefore, you are not required to respond to the provisions of 10 CFR 2.201 unless the description therein does not accurately reflect I&M's corrective actions or position. In that case, or if I&M chooses to provide additional information, you should follow the instructions specified in the enclosed Notice. However, I&M is required to either pay the proposed civil penalty or respond in accordance with the instructions in the enclosed Notice.

Please contact Hironori Peterson, Chief, Operations Branch, with questions. Mr. Peterson can be reached at (630) 829-9707.

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 respond, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system

² The base civil penalty amount for a Severity Level III problem occurring from November 12, 1996, to November 2, 2000, was \$55,000 (61 Federal Register (FR) 199, October 11, 1996, page 53577. For a Severity Level III problem occurring from November 3, 2000, to November 25, 2004, the base civil penalty amount was \$60,000 (65 FR 243, December 18, 2000, page 79139) and was increased to \$65,000 on November 26, 2004 (69 FR 206, October 26, 2004, page 62485). Since the period of the majority of the violations occurred after November 3, 2000, and before November 26, 2004, the NRC considered the base civil penalty of \$60,000 to be applicable to this enforcement action.

(ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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 Geoffrey E. Grant Acting for/

James L. Caldwell
Regional Administrator

Docket Nos. 50-315; 50-316
License Nos. DPR-58; DPR-74

- Enclosures:
1. Notice of Violation and Proposed Imposition of Civil Penalty
 2. NUREG/BR-0254 Payment Methods (Licensee only)

- cc w/encl 1:
- J. Jensen, Site Vice President
 - L. Weber, Plant Manager
 - G. White, Michigan Public Service Commission
 - L. Brandon, Michigan Department of Environmental Quality - Waste and Hazardous Materials Division
 - Emergency Management Division
 - MI Department of State Police
 - D. Lochbaum, Union of Concerned Scientists

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NAME	R. Lanksbury for H. Peterson	C. Nolan ¹	R. Lanksbury for C. Pederson	B. Berson	K. O'Brien	G. Grant for J. Caldwell	
DATE	11/22/05	11/22/05	11/ 22/05	11/22/05	11/22/05	11/23/05	

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¹Concurrence from HQ in 11/22/05 telephone call from C. Nolan, OE, to K. O'Brien, RIII. C. Nolan's concurrence includes NRR and OGC.

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M. Johnson, OE

C. Nolan, OE

D. Starkey, OE

J. Caldwell, RIII

G. Grant, RIII

C. Pedersen, RIII

M. Satorius, RIII

A. Boland, RIII

S. West, RIII

L. Chandler, OGC

B. Jones, OGC

J. Dyer, NRR

D. Holody, Enforcement Coordinator, RI

C. Evans, Enforcement Coordinator, RII

K. O'Brien, Enforcement Coordinator, RIII

K. Fuller, Enforcement Coordinator, RIV

F. Bonnett, Enforcement Coordinator, NRR

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G. Caputo, OI

J. Schlueter, OSTP

D. Dandois, OCFO/DAF/LFARB

H. Peterson, RIII

C. Lipa, RIII

C. Phillips, RIII

C. Weil, RIII

J. Strasma, RIII:PA

R. Lickus, RIII

J. Lynch, RIII

OEWB

OEMAIL

DRPIII

DRSIII

PLB1

JRK1

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Indiana Michigan Power Company
D. C. Cook Nuclear Plant
Units 1 and 2

Docket Nos. 50-315; 50-316
License Nos. DPR-58; DPR-74
EA-05-171

During an NRC inspection conducted from April 18 to August 26, 2005, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- B. 10 CFR 50.9 requires 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.

Contrary to the above, the Indiana Michigan Power Company (I&M), the facility licensee for the D. C. Cook Nuclear Plant (CNP), provided inaccurate information in an August 2, 2004, letter to the NRC. Specifically, in the August 2, 2004, letter, I&M described its corrective actions for an apparent violation (EA-04-109) as having included: (1) performing "a 100% review (self-assessment) of all operator medical records;" and (2) doing "a complete review of medical records for all current license holders." The letter also documented that these actions were completed during February and March of 2004 and that I&M did not identify any medical records for NRC-licensed operators that would require an individual's license to include a restriction. However, during the April 18 to August 26, 2005, NRC inspection, an NRC inspector and CNP staff identified that the medical records for three NRC-licensed individuals included information that was present in the files during the February and March 2004 time frame and would have required the NRC to include a restriction in, to potentially disqualify, or include a restriction in the individual's license. The medical records documented that one of the individuals required corrective lenses and that two of individuals were diagnosed with chronic pulmonary disease, a potentially disqualifying permanent disability or illness. Moreover, I&M acknowledged in its October 10, 2005, response to the apparent violations that it did not review all information contained in the licensed operator medical files as stated in its August 2, 2004, letter. Therefore, the information in I&M's August 2, 2004, letter was incomplete and inaccurate. The information was material to the NRC because the NRC subsequently placed restrictions on the reactor operator licenses once it obtained the relevant information on the license holders' medical condition, and because the NRC used the information, in part, to assess CNP's corrective actions associated with an apparent violation that was ultimately issued to I&M on September 29, 2004, as a Severity Level III violation (EA-04-109).

- C. 10 CFR 50.74 provides, in part, that each facility licensee notify the appropriate NRC Regional Administrator within 30 days of the permanent disability or illness, as described in 10 CFR 55.25, of a licensed operator or a senior operator.

10 CFR 55.25 provides, in part, that during the term of the license the facility licensee must notify the Commission, in accordance with 10 CFR 50.74(c), within 30 days of a licensee developing a permanent physical or mental condition that causes the licensee to fail to meet the requirements of 10 CFR 55.21. 10 CFR 55.25 further provides that for conditions for which a conditional license (as described in 10 CFR 55.33(b)) is requested, the facility licensee shall provide medical certification on NRC Form 396, "Certification of Medical Examination by Facility Licensee," to the Commission (as described in 10 CFR 55.23).

10 CFR 55.23, provides, in part, that a facility licensee complete and sign NRC Form 396, "Certification of Medical Examination by Facility Licensee," to certify the medical fitness of the applicant. 10 CFR 55.23(a) provides that NRC Form 396 must certify that a physician has conducted the medical examination of the applicant as required in 10 CFR 55.21. 10 CFR 55.23(b) provides that when the certification requests a conditional license based on medical evidence, the medical evidence must be submitted to the Commission on NRC Form 396.

10 CFR 55.21 provides, in part, that an applicant for a license must have a medical examination by a physician and a licensee must have a medical examination by a physician every two years. 10 CFR 55.21 further provides that the physician must determine that the applicant or licensee meets the requirements of 10 CFR 55.33(a)(1).

10 CFR 55.33(a)(1) provides, in part, that the NRC will approve an initial application for a license if it finds the applicant's 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. The NRC will base its finding upon the certification by the facility licensee as detailed in 10 CFR 55.23.

NRC Form 396, "Certification of Medical Examination by Facility Licensee," is signed by an authorized representative of the facility licensee who certifies that the applicant for a reactor operator or SRO license was examined by a physician. The authorized representative of the facility licensee also certifies that based on the results of the physical examination the physician has determined that the applicant's physical condition and general health would not be expected to cause operational error endangering public health. The authorized representative of the facility licensee additionally certifies on NRC Form 396 that the guidance contained in ANSI/ANS 3.4 1983 was followed in reaching the determination of the applicant's health.

ANSI/ANS 3.4-1983, Section 5.3, "Disqualifying Conditions," provides, in part, that a history or other indication of any disqualifying condition shall be considered disqualifying unless adequate supplemental findings demonstrate that no disqualifying condition exists. Section 5.3 of ANSI/ANS 3.4-1983 also provides that the presence of certain medical conditions, unless adequately compensated by the methods specified in Subsections 5.3.1 through 5.3.9, shall disqualify the individual. Subsection 5.3.1, "Respiratory," lists incapacitating chronic pulmonary disease as a disqualifying condition. ANSI/ANS 3.4-1983, Section 5.4, "Specific Minimum Capacities Required For Medical Qualification," Subsection 5.4.6, "Respiratory," provides, in part, that an individual must have capacity and reserve to perform strenuous physical exertion in emergencies, and ability to utilize respiratory protective filters and air supply masks.

Contrary to the above, from November 29, 1998, to May 18, 2005, and January 6, 2003 to May 18, 2005, respectively, a period in excess of 30 days, I&M did not report changes in the permanent medical condition of two NRC-licensed Senior Reactor Operators following the Senior Reactor Operators being diagnosed with medical conditions which were potentially disqualifying in accordance with ANSI/ANS 3.4-1983, Sections 5.3 and 5.4, as evidenced by the following examples:

1. On November 23, 1998, a Senior Reactor Operator was diagnosed with chronic pulmonary disease, a potentially disqualifying permanent disability or illness, for which I&M's Medical Review Officer recommended to the facility licensee that the Senior Reactor Operator's use of a respirator be restricted.
 2. On January 6, 2003, a Senior Reactor Operator was diagnosed with chronic pulmonary disease, a potentially disqualifying permanent disability or illness, for which I&M's Medical Review Officer recommended to the facility licensee that the Senior Reactor Operator's use of a respirator be restricted.
- C. 10 CFR 55.21 provides, in part, that an applicant for a license must have a medical examination by a physician and a licensee must have a medical examination by a physician every two years. 10 CFR 55.21 further provides that the physician must determine that the applicant or licensee meets the requirements of 10 CFR 55.33(a)(1).
- 10 CFR 55.33(a)(1) provides, in part, that the NRC will approve an initial application for a license if it finds the applicant's 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. The NRC will base its finding upon the certification by the facility licensee as detailed in 10 CFR 55.23.

NRC Form 396, "Certification of Medical Examination by Facility Licensee," is signed by an authorized representative of the facility licensee who certifies that the applicant for a reactor operator or SRO license was examined by a physician. The authorized representative of the facility licensee also certifies that based on the results of the physical examination the physician has determined that the applicant's physical condition and general health would not be expected to cause operational error endangering public health. The authorized representative of the facility licensee additionally certifies on NRC Form 396 that the guidance contained in ANSI/ANS 3.4-1983 was followed in reaching the determination of the applicant's health. ANSI/ANS 3.4-1983, Section 5.3, "Disqualifying Conditions," provides, in part, that a history or other indication of any disqualifying condition shall be considered disqualifying unless adequate supplemental findings demonstrate that no disqualifying condition exists. Section 5.3 of ANSI/ANS 3.4-1983 also provides that the presence of certain medical conditions, unless adequately compensated by the methods specified in Subsections 5.3.1 through 5.3.9, shall disqualify the individual. Subsection 5.3.1, "Respiratory," lists incapacitating chronic pulmonary disease as a disqualifying condition. ANSI/ANS 3.4-1983, Section 5.4, "Specific Minimum Capacities Required For Medical Qualification," Subsection 5.4.6, "Respiratory," provides, in part, that an individual must have capacity and reserve to perform strenuous physical exertion in emergencies, and ability to utilize respiratory protective filters and air supply masks. Subsection 5.4.5, "Eyes," of ANSI/ANS 3.4-1983 also provides that the minimum capacity required for medical qualification is near and distant visual acuity 20/40 in the better eye, corrected or uncorrected.

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.

Contrary to the above, on April 26 and May 5, 2004, respectively, I&M provided incomplete and inaccurate information to the NRC on two NRC Form 396s for the renewal or amendment of two SRO licensees, and on November 4, 2002, I&M submitted incomplete and inaccurate information to the NRC on NRC Form 396 in support of an application for a SRO licensee, as demonstrated by the following examples:

1. On April 26, 2004, I&M provided NRC Form 396 to the NRC in support of an application for an amended SRO's license and the facility licensee certified the Senior Reactor Operator's license required no medical or physical restrictions. However, on November 23, 1998, the Senior Reactor Operator was diagnosed with chronic pulmonary disease, a potentially disqualifying permanent disability or illness, and during December 1998, I&M's Medical Review Officer

recommended to the facility licensee that the Senior Reactor Operator's use of a respirator be restricted.

2. On May 5, 2004, I&M provided NRC Form 396 to the NRC in support of an application for renewal of a Senior Reactor Operator's license and the facility licensee certified that the Senior Reactor Operator's license required no medical or physical restrictions. However, on January 6, 2003, the Senior Reactor Operator was diagnosed with chronic pulmonary disease, a potentially disqualifying permanent disability or illness, and I&M's Medical Review Officer recommended to the facility licensee that the Senior Reactor Operator's use of a respiratory be restricted.
3. On November 4, 2002, I&M provided NRC Form 396 to the NRC in support of an application for a Senior Reactor Operator license and the facility licensee certified that the applicant's license required no medical or physical restrictions. However, the individual was required to use corrective lenses on duty in order to meet visual requirements.

This information is material to the NRC because the information is used to determine that the operator's 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. The NRC subsequently placed restrictions on the aforementioned reactor operator licenses once it obtained the relevant information on the license holders' medical condition.

This is a Severity Level III problem (Supplements I and VII).
Civil Penalty - \$60,000 (EA-05-171)

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance will be achieved is already adequately addressed on the docket in Inspection Report No. 05000315/2005006(DRS); 05000316/2005006 (DRS) and an October 10, 2005, letter from the licensee. 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, EA-05-171," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and Enforcement Officer, Region III, and a copy to the NRC Resident Inspector at the D.C. Cook Nuclear Plant, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

The licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission,

a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the licensee fail to answer within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty, an Order imposing the civil penalty will be issued. Should the licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation, EA-05-171" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply, if provided, by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (statement as to payment of civil penalty and Answer to a Notice of Violation) should be addressed to: Michael R. Johnson, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator and Enforcement Officer, U.S. Nuclear Regulatory Commission, Region III and a copy to the NRC Resident Inspector at the D. C. Cook Nuclear Plant.

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>. 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.

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

Dated this 23rd day of November 2005