



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

October 29, 2009

EA-09-065

Mr. J. Randy Johnson
Vice President - Farley
Southern Nuclear Operating Company, Inc.
7388 North State Highway 95
Columbia, AL 36319

SUBJECT: NOTICE OF VIOLATION (NRC OFFICE OF INVESTIGATIONS REPORT
NO. 2-2008-055 AND NRC INSPECTION REPORT 05000348/2009405 AND
05000364/2009405)

Dear Mr. Johnson:

This refers to an investigation completed on March 5, 2009, by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI). The purpose of the investigation was to review the circumstances surrounding a fitness for duty incident that occurred at the Southern Nuclear Operating Company, Inc. (SNC) Farley Nuclear Plant (FNP) on June 27, 2008. The incident involved a Nuclear Security Officer (NSO) who deliberately consumed alcohol for several hours prior to arriving for work at FNP and entered the facility with alcohol concealed in bottles containing a mixture of alcohol and water. After the NSO had been on duty as an armed responder inside the protected area for approximately five to six hours, he then consumed alcohol and was found shortly thereafter by FNP personnel to be in an unresponsive state and not fit for duty.

The results of our review, including the identification of three apparent violations, were documented and forwarded to SNC in NRC Inspection Report Nos. 05000348,364/2009404, dated July 1, 2009. In our letter, you were informed that the NRC was considering escalated enforcement action for two of the three apparent violations.

At SNC's request, a pre-decisional enforcement conference was held in the NRC's Region II office with you and members of your staff on August 26, 2009. At the conference, SNC acknowledged the deliberate actions of the NSO and the circumstances that resulted in the violations as described in the NRC's letter of July 1, 2009. SNC provided the results of its in-depth investigation, including a detailed chronology of the incident, its response prior to and upon recognition of the condition of the NSO, root and contributing causes, corrective actions and enhancements to preclude recurrence. SNC acknowledged the seriousness of the NSO's deliberate actions, but stated that the significance of this incident did not rise to the level of escalated enforcement for several reasons. To summarize its significance characterization, SNC stated that additional armed responders were always onsite during the incident such that the minimum required security staffing levels were maintained. The NSO was unresponsive for a short duration (up to approximately 30 minutes based on SNC's presentation). SNC stated that the NSO provided "insufficient cues" to allow FNP staff to identify the cause of the NSO's condition (i.e., illness or some other factor) during the majority of time the NSO was onsite.

SNC also stated that, as with all SNC employees, the NSO had received training and had a clear understanding of its Fitness for Duty (FFD) policy, yet took actions to knowingly violate the policy and avoid detection by concealing alcohol in a water bottle.

Based on the information developed during the investigation and the information provided at the conference, the NRC has determined that violations of NRC requirements occurred. One violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The cited violation involved Title 10 to the *Code of Federal Regulations* (10CFR), Part 73.55(f), which states in part that each guard, watchman or armed response individual on duty shall be capable of maintaining continuous communication with an individual in each continuously manned alarm station. On June 27, 2008, an NSO deliberately consumed alcohol prior to arriving for work at FNP and while on site, for a period of time, the armed response individual was not capable of maintaining continuous communication with an individual in each continuously manned alarm station. In this case, the NSO was found by SNC personnel in an unresponsive state and unavailable to perform his duties as required by 10 CFR 73.55(f).

In this case, the violation discussed above did not result in any actual consequences because an actual security incident did not occur that necessitated action by the NSO. However, FNP's security response capability was degraded for a period of time because of the condition of the NSO. In addition, the deliberate actions of the NSO in consuming alcohol within five hours of reporting to work, entering the facility with alcohol concealed in water bottles, and then consuming more alcohol while onsite during the performance of his duties to the point of becoming unresponsive, is egregious and demonstrates a complete lack of regard for NRC requirements, as well as SNC policies and security procedures. Based on the underlying security significance, the deliberate actions of the NSO, and because the NRC holds licensees responsible for the actions of its employees, the NRC has concluded that the violation is appropriately characterized at Severity Level III, in accordance with the NRC Enforcement Policy.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$65,000 is considered for each Severity Level III violation. Because of the willful aspects, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Because the circumstances of the incident were identified by FNP personnel, credit is warranted for the factor of *Identification*. As SNC presented at the conference, corrective actions and enhancements included, in part: (1) immediate removal of the NSO from duty and alcohol testing, reporting of the incident in accordance with 10 CFR 26.719(b), initiation of a formal investigation into the circumstances of the incident, termination of the NSO's employment and entry into the Personnel Access Data System; (2) training to all employees with emphasis on immediately reporting to their respective supervision any unusual behavior such as individuals observed to be excessively tired or sleeping, illegal drug or alcohol use, or inattentiveness to duties; (3) training and fitness for duty program revisions to require that unusual situations should be immediately reported in lieu of attempting to diagnose the problem; (4) a revision to the Conduct of Operations procedure to require the Nuclear Security Captain to conduct a face-to-face briefing with all security personnel prior to each shift in order to make a positive determination that each individual is fit for duty prior to beginning work; (5) an SNC fleet-wide initiative to review pre-employment processes and all components of the FFD program to ensure that the program and supporting structures are proactive in identifying individuals who

may not be reliable and trustworthy to safely and competently perform their duties; (6) additional FFD program enhancements as discussed at the conference. Based on the above, credit is warranted for the factor of *Corrective Action*.

Therefore, to encourage prompt identification of violations, and prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to propose that a civil penalty not be assessed in this case. However, significant violations in the future could result in a civil penalty.

In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason 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 this letter and in the information presented by SNC at the conference. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

As advised in our letter of July 1, 2009, the number and characterization of the apparent violations described therein was subject to change as a result of further NRC review. Our letter identified two potentially escalated apparent violations (one involving the requirements of 10 CFR 26.10), and one non-escalated apparent violation involving the requirements of 10 CFR 26.10 (b) and (c). After further review subsequent to the enforcement conference, the NRC has concluded that both of the above apparent violations involving 10 CFR 26.10 will be combined into one non-escalated violation. In this case, an auxiliary operator identified that the NSO was inattentive, but failed to immediately report the incident to security management as required by FNP's continuing behavior observation program. These actions are contrary to 10 CFR 26.10, which require that a licensee's fitness for duty program must provide reasonable assurance that individuals are fit for duty and free from the influence of any substances, legal or illegal, and must provide reasonable measures for the early detection of persons who are not fit to perform their duties. This violation is characterized as having very low security significance (Green). Because of the very low security significance and because it is entered into your corrective action program, the NRC is treating this violation as non-cited (NCV), consistent with Section VI.A.1 of the NRC's Enforcement Policy. This finding is assigned a cross-cutting aspect in the Work Practices component of the Human Performance area (H.4(b)) because the licensee did not define and effectively communicate expectations regarding compliance with the Fitness for Duty Behavioral Observation procedure such that employees were adequately prepared to assess the situation and contact their supervisor.

For administrative tracking purposes, this letter is issued as NRC Inspection Report 05000348/2009405 and 05000364/2009405. The Severity Level III violation discussed above will be tracked as violation VIO 05000348,05000364/2009405-01: Nuclear Security Officer not Capable of Maintaining Continuous Communication. The NCV discussed above will be tracked as VIO 05000348,05000364/2009405-02, Inadequate Continuing Behavioral Observation Program. Accordingly, AVs 05000348,05000364/2009404-01, -02, and -03 are closed.

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public

Document Room or from the NRC's Agency-Wide Document Access and Management System (ADAMS) on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, if you choose to respond, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

Luis A. Reyes
Regional Administrator

Docket No.: 50-348, 50-364
License No.: NPF-2, NPF-8

Enclosure: Notice of Violation

cc w/encl: (see page 5)

cc w/ encl:

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Letter to J. Randy Johnson from Luis Reyes

SUBJECT: NOTICE OF VIOLATION (NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-2008-055 AND NRC INSPECTION REPORT 05000348/2009405 AND 05000364/2009405)

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E-MAIL COPY?	YES	YES	YES	YES	YES NO	YES NO	YES NO

OFFICIAL RECORD COPY DOCUMENT NAME:

NOTICE OF VIOLATION

Southern Nuclear Operating Company, Inc.
Farley Nuclear Plant
Units 1 and 2

Docket Nos. 50-348, 50-364
License Nos. NPF-2, NPF-8
EA-09-065

During an NRC investigation completed on March 5, 2009, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 73.55(f) states that each guard, watchman or armed response individual on duty shall be capable of maintaining continuous communication with an individual in each continuously manned alarm station required by paragraph (e)(1) of this section, who shall be capable of calling for assistance from other guards, watchmen, and armed response personnel and from local law enforcement authorities.

Contrary to the above, on June 27, 2008, a nuclear security officer consumed alcohol before reporting for duty and while on post as an armed responder inside the protected area, rendering himself incapable of maintaining continuous communication with an individual in each continuously manned alarm station.

This is a Severity Level III violation (Supplement III).

The NRC has concluded that information regarding the reason for the violation, 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 the cover letter to this Notice, and in the material presented by Southern Nuclear Operating Company, Inc., at the conference. 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-09-065" and send it to the 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, U.S., Nuclear Regulatory Commission, Region II, within 30 days of the date of the letter transmitting this Notice of Violation (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>. 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 29th day of October 2009