



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION I  
475 ALLENDALE ROAD  
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 8, 2011

EA-10-090  
EA-10-248  
EA-11-106

Mr. Kevin Bronson  
Site Vice President  
Entergy Nuclear Northeast  
James A. Fitzpatrick Nuclear Power Plant  
Post Office Box 110  
Lycoming, NY 13093

SUBJECT: JAMES A. FITZPATRICK NUCLEAR POWER PLANT – NRC INVESTIGATION  
REPORT NOS. 1-2009-041, 1-2010-019, and 1-2010-031

Dear Mr. Bronson:

This letter refers to three investigations conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) at James A. FitzPatrick (FitzPatrick) Nuclear Power Plant, regarding activities within the Radiation Protection (RP) department at the facility. During the investigations, apparent violations of NRC requirements were identified, including some that the NRC has found to be willful. A factual summary of the results of the OI investigations, and a description of the apparent violations, are enclosed.

The first OI investigation (1-2009-041) was initiated on July 1, 2009, to determine whether an RP Technician (RPT), who is no longer employed at the facility, failed to ensure that several employees completed their required annual quantitative respirator fit tests (tests), and then falsified the employees' test qualification records, indicating that they had completed the tests. Based on evidence developed during the first OI investigation, the NRC identified apparent violations, including that, on a number of occasions between 2006 and 2009, an RPT (RPT #1) deliberately: (1) failed to ensure that employees completed the fit tests, contrary to 10 CFR 20.1703; and, (2) falsified material information related to these tests and then subsequently maintained the material false information, contrary to 10 CFR 50.9. The NRC also concluded that two staff level individuals working outside the RP department acted with careless disregard in that they had serious doubts about whether the tests they received met the fit test requirements, yet they did not follow through to ensure that the testing requirements were carried out, contrary to 10 CFR 20.1703. An improperly fitting respirator could impact the ability of emergency response personnel to perform their duties due to the inhalation of toxic atmospheres. Entergy Nuclear Northeast has taken actions to address these issues, including assuring that appropriate fit tests on individuals have occurred.

The second OI investigation (1-2010-019) was initiated on February 5, 2010, to determine whether several RPTs: (1) did not perform independent verification of valve manipulations for drywell continuous air monitor (DWCAM) air sample surveillances and falsified the related surveillance records; (2) replaced high efficiency particulate air (HEPA) filters outside of posted contaminated areas, rather than within the areas as required; (3) failed to follow the personnel contamination event (PCE) procedure and falsified related PCE records; and, (4) bypassed

contamination monitors at the radiologically controlled area (RCA) exit. Based on evidence developed during this second OI investigation, the NRC identified apparent violations, including that, on a number of occasions between 2006 and 2009, RPT #1 deliberately failed to: (1) properly complete the DWCAM procedure and document the completed air sample surveillances; (2) follow the PCE procedure and document related PCE records; and (3) ensure individuals leaving the RCA exit (that had alarmed a portal) proceed through the contamination monitors and document the associated PCEs, all contrary to plant procedures that implement regulatory requirements in Technical Specification 5.4.1 and 10 CFR 50.9. The NRC did not identify any violations associated with investigation item 2, replacement of HEPA filters outside of the posted contaminated area.

The third OI investigation (1-2010-031) was initiated on April 8, 2010, to determine whether RPTs failed to adequately perform the following activities: (1) conduct semi-annual leak testing of radioactive sources; (2) inspect/check the high radiation area boundaries, whole body count monitors (WBCMs), operability of the "Marquees and ALARA (as low as reasonably achievable) Blue Lights," frisker and counting equipment, and some of the temporary Air Radiation Monitors (ARMs); (3) survey the reactor building 326 foot elevation NW roof access between air lock doors; and, (4) record accurate completion of such activities. Based on the evidence developed during the third OI investigation, the NRC identified apparent violations, including that, on multiple occasions between 2006 and 2009, two RPTs willfully failed to survey the reactor building 326' NW roof access between air lock doors, contrary to plant procedures (the activity identified in item 3). In particular, RPT #1 acted deliberately and a second RPT acted with careless disregard. The NRC identified apparent violations of requirements related to items 1 and 4; however, they were found to be non-willful. The NRC did not identify any violations associated with item 2.

The apparent violations being considered for enforcement action are described in detail in Enclosure 2, "Apparent Violations." Escalated enforcement action is being considered for the apparent violations associated with the respirator fit testing issue. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

Before the NRC makes its enforcement decision, we request that you attend a Pre-decisional Enforcement Conference (PEC), to discuss the apparent violations, their significance, causes and corrective actions. The PEC also affords you the opportunity to provide your perspective on the apparent violations and any other information that you believe the NRC should take into consideration before making an enforcement decision. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The PEC, which will be transcribed, should be held within 30 days of the date of this letter. The NRC will issue a meeting notice announcing the date and time of the PEC, although the PEC is not open for public observation, since the apparent violations were based on evidence developed during OI investigations.

In lieu of a PEC, you may alternatively request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve the issues. ADR is a general term encompassing various techniques for resolving conflicts using a third party neutral. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to

use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party.

Please contact Mel Gray of my staff at 610-337-5209 within 10 days of the date of this letter, for any questions regarding these matters, and to inform him of your decision to attend a PEC or participate in ADR. If you elect to participate in ADR, you should also contact ICR at 877-733-9415 within 10 days of the date of this letter.

In addition, please be advised that the number and characterization of apparent violations described herein may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), 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>. 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.

Sincerely,



Darrell J. Roberts, Director  
Division of Reactor Projects

Docket No. 50-333  
License No. DRP-59

Enclosures:

1. Factual Summary of OI Investigations 1-2009-041, 1-2010-019, 1-2010-031
2. Apparent Violations

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/RA/

Darrell J. Roberts, Director  
Division of Reactor Projects

Docket No. 50-333  
License No. DRP-59

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2. Apparent Violations

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**Factual Summary - NRC Office of Investigations (OI) Reports Nos. 1-2009-041,  
1-2010-019 and 1-2010-031**

*1-2009-041 - Failure to Perform Respirator Quantitative Fit Tests as Required and Creation of False Records:*

OI initiated the investigation on July 1, 2009, to determine whether a Radiation Protection Technician (RPT), who is no longer employed at Fitzpatrick, failed to ensure that employees completed their required annual quantitative fit tests (tests), and then falsified the employees' test qualification records, indicating that they had completed the tests. The tests are done to ensure that personnel are able to use respiratory protection equipment, which require a tight seal, in airborne particulate areas during performance of work or emergency response situations. During his interview with OI, RPT #1 admitted that he did not require employees, particularly employees with facial hair, or experienced employees who had been previously tested, to wear the respiratory protection equipment (respirator) as required. He further admitted that he falsified the employees' test qualification records, indicating that they had completed the tests. RPT #1 testified to OI that he falsified the tests whenever a worker was alone and RPT#1 accepted the worker's offer to decline wearing the respirator; however, this statement was not corroborated by other licensee employees. RPT #1 also admitted to passing a contractor in 2009, who actually donned a respirator, but failed the test. RPT #1 acknowledged his awareness of the requirements related to the conduct of the tests and the manner of recording the tests' completion. RPT #1 stated that he engaged in such activities for several years, but that workers at the plant do not wear fit-requiring respirators anymore (they wear power air purifying respirators). RPT #1 further stated that he did not believe that at any time he created unsafe situations at the plant.

During OI interviews, RPT #1 provided names of other licensee employees that participated in similar practices and/or were aware that he was falsifying the tests. When questioned, 35 individuals admitted to the licensee and/or OI to not properly completing at least one test administered by the RPT. The individuals stated that they had relied on the RPT's expertise and experience in the conduct of the tests. However, two of the 35 individuals provided a detailed account of the issue in their testimony to OI, including their state of mind when leaving the room of the fit tests. These two individuals testified to OI that they had serious doubts about whether the tests they received met the fit test requirements, but did not follow through on their concerns. Several other individuals denied ever having received a "free pass" from RPT#1 for their tests. All of these individuals told OI that they rarely, if ever, wore respirators inside the plant on an actual work-related occasion.

None of the site management level employees that OI interviewed testified to being aware that RPT#1 had been improperly qualifying plant employees on the respirator tests. OI also noted that during the RPT's second interview with OI, he admitted to having tried to protect the plant and coworkers by not disclosing who knew about his having falsified the tests and for how long he engaged in the misconduct.

*1-2010-019 - Deliberate Violations of Procedures Governing RP and Falsification of Surveillance and Survey Records:*

OI initiated the investigation on February 5, 2010, to determine whether RPTs: (1) did not perform independent valve manipulation verification for drywell continuous air monitor (DWCAM) air sample surveillances and falsified the surveillance records; (2) replaced high efficiency particulate air (HEPA) filters outside of posted contaminated areas, rather than within the areas as required; (3) failed to follow the personnel contamination event (PCE) procedure and falsified PCE records; and, (4) bypassed contamination monitors at the RCA exit.

Regarding the DWCAM air sample surveillances, RPT #1 did not obtain the procedurally required independent verification. The RPT admitted to OI that although he performed the air sample surveillances, he either forged the signatures of other RPTs as independent verifiers (two occasions), or provided the surveillance form to other RPTs after the surveillance had occurred (a week or later) and requested that they sign as the independent verifier. The other RPTs stated to OI that they had signed as the independent verifier because RPT #1, who performed the surveillances, told them they had been on shift at the time and had verified the equipment alignment, and those other RPTs accepted that explanation, regardless of whether they recalled doing the verification or not. OI also verified, using key card access records, that the RPTs listed as the independent verifiers had, on occasions, not actually been in the plant areas where the air sample surveillance occurred.

Regarding the failure to follow PCE procedures and falsifying PCE records, RPT #1 admitted to OI that he did not record specific PCEs because he did not want to complete the paperwork and did not want to get the worker in trouble for becoming contaminated. The RPT did not recall when such events specifically occurred, but he stated that it was common practice for RPTs to not document PCEs, but simply to decontaminate the affected workers and get them out of the plant. All other RPTs interviewed by OI testified that they followed PCE procedures correctly, and that they had never observed any violations of PCE procedures.

Regarding the bypassing of contamination monitors at the RCA exit, RPT #1 admitted to OI that on occasion he removed a contaminated personal item (like a shirt), without it going through the contamination monitor at the RCA exit. He stated that he knew he could decontaminate items outside the plant and this practice would not be harmful, and that contamination was low enough that the items did not alarm monitors when he exited the plant with the items. RPT #1 stated that other RPTs (a) bypassed the monitors (although he could not identify any dates this occurred - other RPTs interviewed by OI denied doing so); and (b) routinely covered portal monitor sensors with clean contamination sample pads ("smears") to prevent them from detecting contamination on personnel, and his supervisor was aware of this practice (the other RPTs interviewed by OI only admitted to covering portal monitor sensors with clean smears when they were performing the daily source checks, a practice Region I inspection staff verified was permitted by the licensee procedure). The RPT's supervisor, and other RP supervisors, denied being aware of RPTs leaving the RCA with contaminated personal items or incorrectly defeating contamination monitors.

*1-2010-031 - Potential Deliberate Violations of RP Procedures and Falsification of Records:*

OI initiated this case on April 8, 2010, to determine whether RPTs violated NRC regulations and/or licensee procedures governing radiation protection, and falsified RP department surveillance and survey records. OI interviewed numerous RPTs and RPT management regarding the failure to adequately perform the following activities: (1) conduct semi-annual leak testing of sources; (2) inspect/check the high radiation area boundaries, whole body count monitors (WBCMs), operability of the "Marquees and ALARA (as low as reasonably achievable) Blue Lights," frisker and counting equipment, and some of the temporary Air Radiation Monitors (ARMs); (3) survey the reactor building (RB) 326 foot elevation NW roof access between air lock doors; and, (4) record accurate completion of such activities. OI obtained testimony from six individuals that indicated that those individuals had violated NRC regulations and/or licensee procedures governing radiation protection. Regarding the failure to conduct and document those radiation surveys of the RB 326' area, one of the six individuals (RPT #1) admitted to OI that he did not conduct this survey appropriately and knew what he was doing was incorrect. In addition, a second RPT (of the six individuals) testified to being aware of an inconsistency between his actions and the procedural requirements. However, he failed to follow up with management on the issue.



## Apparent Violations

### **1-2009-041 - Failure to Perform Respirator Quantitative Fit Tests as Required and Creation of False Records**

1. The James A. Fitzpatrick renewed license, DPR-59, Docket 50-333, Section 2.C states in part, "This renewed license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations in 10 CFR Chapter 1: Part 20...and is subject to all applicable provisions of the act and to the rules, regulations and orders of the Commission now or hereafter in effect."

10 CFR 20.1703 states, in part, that if the licensee assigns or permits the use of respiratory protection equipment to limit the intake of radioactive material, the licensee shall implement and maintain a respiratory protection program that includes fit testing before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed 1 year. It further states that the licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face-faceplate seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator face piece.

The James A. Fitzpatrick Nuclear Power Plant implements the regulatory requirements for respirator fit testing in procedure RP-RESP-04.09, "Portacount Respirator Fit Testing", Revision 10, which provides the requirements, procedure, and acceptance criteria for respirator fit testing. Specifically, in Section 6.2, "Respirator Quantitative Fit Testing," Step 6.2.6 states "Don respirator using mirror for assistance." In addition, the procedure also states that the records generated by the performance of the procedure are considered "Quality Records."

Contrary to the above, on multiple, but an indeterminate number of occasions between 2006 and 2009, several individuals who were required to have been respirator fit tested did not have the respirator fit tests performed within the required annual frequency, to ensure that objects, materials, or substances, or any conditions that could interfere with the respirator seal or valve function, that are under control of the wearer were not present between the wearer's skin and sealing surface of the respirator.

2. 10 CFR 50.9 states, in part, that information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the licensee shall be complete and accurate in all material respects.

Contrary to the above, on multiple, but an indeterminate number of occasions between 2006 and 2009, respirator fit testing records maintained by the licensee were not complete and accurate in all material respects in that the annual quantitative respirator fit test qualification records for several involved individuals indicated that the tests were performed, when in fact, fit tests had not been conducted.

**1-2010-019 - Deliberate Violations of Procedures Governing RP and Falsification of Surveillance and Survey Records**

1. The James A. FitzPatrick Technical Specification Section 5.4.1 states, in part, that written procedures shall be established, implemented, and maintained for the applicable procedures recommended in the Regulatory Guide (RG) 1.33, Appendix A (November 1972 edition). Appendix A, Section G of the RG identifies radiation protection procedures for control of radioactivity for limiting materials released to the environment and limiting personnel exposure. These include access control to radiation areas, contamination control, and personnel monitoring. Section H.2.b of the RG identifies radiation protection and surveillance tests that should be covered by written procedures. These include inspections and calibrations for each surveillance test, inspection, or calibration listed in the technical specifications.

- a. Procedure RP-RESP-03.01, "Drywell Continuous Atmospheric Monitoring System," Revisions 18-27, provides instructions for operation and calibration of the General Atomics Electronic Systems Drywell Continuous Atmosphere Monitoring System(s) (DWCAM). It specifies that after valve manipulations, a second individual must verify correct valve position. Attachment 1 documents weekly data and requires initials and signatures for independent verification of valve manipulations performed during these checks.

Contrary to the above requirements, on eleven occasions between September 2007, and December 2009, DWCAM valves were manipulated, and an independent verification of the DWCAM valve position was not performed by a second RPT. On these occasions, the second verification signature was obtained some undetermined length of time after the surveillance test from an RPT determined to have been on duty the day of the test (but who did not actually perform the independent verification) by the RPT who initially performed the test.

- b. EN-RP-104, "Personnel Contamination Events," Revisions 1-4, provides contamination monitoring requirements, and instructions for response to contamination alarms. Specifically, Section 5.6, "Documentation of Events" requires a condition report, Personnel Contamination Event Log, or Personnel Contamination Event Record be completed, depending on the contamination level.

Contrary to the above, on at least one occasion, on an undetermined date prior to June 2009, an RPT did not document a personnel contamination event identified through radiologically controlled area (RCA) exit monitor portal alarm that exceeded the documentation threshold. Specifically, while the technician took action to address RCA exit portal monitor alarm and decontaminate the individuals, the technician did not document a personnel contamination event as required.

- c. EN-RP-100, "Radworker Expectations," Revisions 0-3, provides basic Radiation Protection (RP) requirements and expectations for radiation workers engaged in radiological work at Entergy nuclear facilities. Section 1.0, Purpose, states that, "Adherence to these requirements and expectations contributes significantly to the

minimization of personnel exposure to radiation and radioactive material and the minimization of personnel contaminations." Section 5.6, "Contamination Control," requires that personal items be scanned prior to exiting an RCA.

Contrary to the above, on one occasion on an undetermined date prior to June 2009, a RPT removed contaminated personal items without having them scanned through the contamination monitor at the RCA exit before exiting the facility.

2. 10 CFR 50.9 states, in part, that information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the licensee shall be complete and accurate in all material respects.

Contrary to the above, on at least 11 occasions between September 2007, and December 2009, Radiation Protection Procedure RP-RESP-03.01, "Drywell Continuous Atmospheric Monitoring System air sample surveillance records maintained by the licensee were not complete and accurate in all material respects in that procedurally required signatures for independent verification of valve manipulation were either forged (two instances) or entered after work completion by personnel who did not actually perform the verifications (nine instances). These procedure records were material since they are identified by the licensee as "quality records" and are required to be retained by the licensee in accordance with 10 CFR 50, Appendix B, Criterion XVII.

Additionally, on September 14, 2008, and December 18, 2008, an RPT forged the signature of the independent verification procedure step for an RPT who did not perform the independent verification procedure step. In one of these instances, reactor building door access records do not indicate that the second RPT accessed the reactor building where the DWCAM is located on that day. The first RPT also admitted to forging the second RPT's signature on a DWCAM weekly data sheet on June 9, 2009. However, the licensee's handwriting expert did not identify the signature of the second RPT on that date as a potential forgery.

#### ***1-2010-031 - Potential Deliberate Violations of RP Procedures and Falsification of Records***

10 CFR 20.1501(a) states in part that each licensee shall make or cause to be made, surveys that –

- (1) May be necessary for the licensee to comply with the regulations in this part; and
- (2) Are reasonable under the circumstances to evaluate
  - (i) The magnitude and extent of radiation levels; and
  - (ii) Concentrations or quantities of radiation levels; and
  - (iii) The potential radiological hazards.

Entergy Nuclear Operations (ENO), James A. FitzPatrick Technical Specification Section 5.4.1 states, in part, that written procedures shall be established, implemented, and maintained for the applicable procedures recommended in Regulatory Guide (RG) 1.33 (November 1972 edition).

Appendix A, Section G of the RG identifies, in part, typical safety-related activities which

Enclosure 2

should be covered by written procedures, including radiation protection procedures for the control of radioactivity for limiting materials released to the environment and limiting personnel exposure, and procedures for maintenance. Appendix A, Section H also identifies, in part, procedures to ensure that tools, gauges, instruments, controls, and other measuring and testing devices are properly controlled, calibrated, and adjusted at specified periods to maintain accuracy.

ENO procedure RP-OPS-08.01, Revisions 13-16, "Routine Surveys and Inspections" Section 6.2 requires that daily surveys and inspections be documented on Attachment 1. Attachment 1 requires that the individual performing the RCA Access Point Surveys to print and sign his/her name.

Contrary to the above, on multiple occasions from 2006 to 2009, RPTs failed to perform daily surveys of the Reactor Building 326 foot elevation airlock.