

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 524,820 hours (50,212 reporting [0.64 hours per response] and 474,608 recordkeeping [1.236 hours per recordkeeper]).

9. *An indication of whether Section 3507(d), Pub. L. 104-13 applies:* Not applicable.

10. *Abstract:* NRC regulations in 10 CFR part 73 prescribe requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The information in the reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 11, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John A. Asalone, Office of Information and Regulatory Affairs (3150-0002), NEOB-10202, Office of Management and Budget, Washington DC 20503.

Comments can also be e-mailed to [JohnA.Asalone@omb.eop.gov](mailto:JohnA.Asalone@omb.eop.gov) or submitted by telephone at (202) 395-4687.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 3rd day of March 2005.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of Information Services.*

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## NUCLEAR REGULATORY COMMISSION

[IA-01-030]

### In the Matter of Jack J. Spurling; Order Prohibiting Involvement in NRC-Licensed Activities

FirstEnergy Nuclear Operating Company (FENOC or Licensee) holds License No. NPF-58 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on November 13, 1986. The license authorizes the operation of the Perry Nuclear Power Plant (Perry) in accordance with the conditions specified therein. The facility is located on the Licensee's site near Painesville, Ohio.

From November 8, 1999, to May 1, 2000, Jack J. Spurling was employed as the Site Superintendent for the Williams Power Corporation (Williams Power), a contractor of the Licensee at Perry.

The NRC Office of Investigations (OI) conducted an investigation to determine if an individual previously employed as a painter by Williams Power at Perry was laid off in violation of 10 CFR 50.7 on March 9, 2000, because the painter had participated in protected activities (OI Report No. 3-2000-025). Three painters employed by Williams Power met with a FENOC maintenance supervisor at Perry on March 8, 2000, to discuss their concerns about directions given by the Williams Power general foreman to omit steps, including preparing the surface prior to applying paint, required by a licensee painting procedure for the Perry Fuel Handling Building. As a result, the FENOC maintenance supervisor prepared a condition report on March 9, 2000. The FENOC maintenance supervisor made Mr. Spurling aware of the contents of the condition report and informed Mr. Spurling that the painters wanted to meet with the Perry Ombudsman to discuss their concerns. Mr. Spurling then arranged for the painters to meet with the Ombudsman. Subsequently, upon the painters' return to the Williams Power work area after their March 9, 2000, meeting with the Ombudsman, Mr. Spurling told the painters that they could volunteer for a layoff or be terminated. As a result, two painters volunteered for layoff and the third was forced to resign. Final payroll checks for the painters had been prepared by Mr. Spurling that morning before they met with the Ombudsman, indicating that the layoff was planned by Mr. Spurling in retaliation for the painters' contacts with the FENOC maintenance supervisor and the Perry Ombudsman.

The painters' contacts with the FENOC maintenance supervisor on March 8, 2000, and the Perry Ombudsman on March 9, 2000, to discuss their concerns about adherence to procedures by Williams Power were activities protected by 10 CFR 50.7. These protected activities were a contributing factor to the threats to the three painters to accept layoff or be terminated, to the layoff of two painters and to the constructive discharge (forced resignation) of the third painter. Therefore, a Notice of Violation was issued on this date to Williams Power Corporation (EA-082) and a Notice of Violation and Proposed Civil Penalty—\$55,000 was issued on this date to the licensee (EA-01-083), both for an apparent violation of 10 CFR 50.7, "Employee Protection."

During its investigation, OI requested that Williams Power provide copies of the termination paychecks which Mr. Spurling had prepared for the painters. Williams Power produced two checks dated March 9, 2000, and a third check dated March 10, 2000. During a sworn transcribed interview with OI on November 2, 2000, and at the predecisional enforcement conference (PEC) on September 26, 2001, Mr. Spurling denied that he had selected the three painters for layoff because they had contacted FENOC with their concerns. Mr. Spurling also denied that he had prepared any termination paychecks prior to asking the painters to volunteer for layoff, and denied that he had destroyed one of the paychecks.

Following the PEC of September 26, 2001, the Williams Power Assistant General Counsel questioned Mr. Spurling about the termination paychecks. Mr. Spurling admitted that he had prepared the termination paychecks on March 9, 2000, prior to asking the painters to volunteer for layoff. Mr. Spurling also admitted that he destroyed a check when one of the painters did not volunteer for layoff. The Assistant General Counsel for Williams Power initiated an inquiry and determined from payroll records that a third check was prepared on March 9, 2000, and located a witness who had been contacted by Mr. Spurling and was told by Mr. Spurling to delete the third check from the payroll record.

In a second interview with OI on January 12, 2002, Mr. Spurling verified that he had prepared termination paychecks prior to asking the painters to volunteer for layoff and that he had destroyed a check when one of the painters did not volunteer for layoff. (OI Report No. 3-2000-025S.)

The Office of Investigations presented information to the U.S. Department of

Justice (DOJ) that Mr. Spurling had deliberately provided inaccurate information to NRC during a November 2, 2000, interview with OI and during the September 26, 2001, PEC. The Office of the United States Attorney, Chicago, Illinois, charged Mr. Spurling with a violation of 18 U.S.C. 1001(a)(2), "Statements or Entries Generally," for the false information provided by Mr. Spurling to OI on November 2, 2000, while Mr. Spurling was under oath. On July 22, 2004, Mr. Spurling appeared in the United States District Court, Northern District of Illinois, Eastern Division, Chicago, Illinois, and entered a plea of guilty to the violation of 18 U.S.C. 1001(a)(2), a felony. Mr. Spurling was sentenced to serve one year of probation, ordered to perform 100 hours of community service, and ordered to pay a special assessment.

Based on the above, NRC concludes that Mr. Spurling deliberately provided materially inaccurate information to the NRC on November 2, 2000, and September 26, 2001, when he denied that he had: (1) Preselected the three painters for layoff; (2) prepared any termination paychecks prior to asking the painters to volunteer for layoff; and (3) destroyed one of the termination paychecks. This information was material to the NRC because it was capable of influencing a determination whether a violation of 10 CFR 50.7 had occurred.

Based on the above, Jack J. Spurling, an employee of Williams Power, a contractor at Perry, caused the Licensee and Williams Power to be in violation of 10 CFR 50.7, and deliberately provided materially inaccurate information to the NRC, placing both himself and Williams Power in violation of 10 CFR 50.5(a)(2). The NRC must be able to rely on its licensees, contractors of NRC licensees, and the employees of NRC licensees and their contractors to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Spurling's deliberate misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Jack J. Spurling were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Jack J.

Spurling be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order and that he immediately cease NRC-licensed activities if currently involved in licensed activities with another NRC licensee.

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, and 10 CFR 150.20, *it is hereby ordered that:*

1. Jack J. Spurling is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Jack J. Spurling is currently involved with any licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the licensee, and provide a copy of this Order to the licensee.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Jack J. Spurling of good cause.

In accordance with 10 CFR 2.202, Jack J. Spurling must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Jack J. Spurling or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois 60532-4352, and to Mr. Spurling if the answer or hearing request is by a person other than Mr. Spurling. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person other than Jack J. Spurling requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by Jack J. Spurling or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 25th day of February, 2005.

For the Nuclear Regulatory Commission.

**Frank J. Congel,**

*Director, Office of Enforcement.*

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