

May 2, 2001

EA-01-011

Mr. John H. Mueller
Chief Nuclear Officer
Niagara Mohawk Power Corporation
Nine Mile Point Nuclear Station
Operations Building, 2nd Floor
P.O. Box 63
Lycoming, NY 13093

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS CASE NO. 1-1999-015, Nine Mile Point 1)

Dear Mr. Mueller:

This letter refers to the results of an investigation initiated by the NRC Office of Investigations (OI) on May 12, 1999, at Nine Mile Point Nuclear Station, Unit 1, to determine whether a former NRC-licensed chief shift operator (CSO) had deliberately provided false, inaccurate, or incomplete information on health history forms. The forms were required by Niagara Mohawk Power Corporation (NMPC), as part of the Fitness-For-Duty (FFD) program and medical certification process required for licensed operators. Based on the evidence developed during this OI investigation, the NRC determined that the former CSO deliberately failed to provide truthful, accurate and complete information on the health history forms for the purpose of misleading your Medical Review Officer (MRO).

In an NRC letter dated March 1, 2001, the NRC provided you a factual summary of the OI investigation, including a basis for the finding, and indicated that an apparent violation of 10 CFR 50.9 occurred. The letter also provided you an opportunity to either (1) respond in writing to the apparent violation within 30 days of the date of that letter, or (2) request a predecisional enforcement conference. In a letter dated March 30, 2001, you provided a written response and indicated that you do not dispute the fact that the former CSO deliberately provided false, inaccurate, or incomplete information on the health history forms.

The NRC has completed its evaluation of the information set forth in the OI report, as well as the information provided in your March 30, 2001, response, and based upon that review, the NRC has determined that a violation of NRC requirements occurred. The CSO's actions caused NMPC to be in violation of 10 CFR 50.9(a) which states that information required by the Commission's regulations to be maintained by a licensee shall be complete and accurate in all material respects. 10 CFR 55.27 requires licensees to document and maintain the results of medical qualification data, test results, and each operator's medical history and to provide the documentation to the NRC upon request.

The information on the health history forms, which were completed by the former CSO in December 1996 and October 1997, was false, inaccurate, and incomplete, in that the CSO

denied taking any medications and being under the care of a health care provider, when, in fact, the CSO was taking prescription medications and was under the care of two health care professionals. As a result, the MRO, when reviewing the inaccurate forms, was precluded from making a fully informed decision about the CSO's medical qualifications to perform licensed activities.

On the health history form signed and dated by the CSO on December 11, 1996, the CSO checked "No" to the following two questions: "Taken or are you currently taking any medications (prescription and/or non-prescription)," and "Been treated for any illnesses or injuries." On a subsequent health history form signed and dated by the CSO on October 8, 1997, the CSO checked "No" to the following question: "Presently under a health care provider's care for any condition," and did not list any medications in response to the following question: "List any medications you are currently taking (prescription and/or over the counter)." These answers were considered deliberately inaccurate because the CSO admitted, during a transcribed interview with OI, that at the time the CSO filled out the health history forms, the CSO was taking prescription medications and was being treated by two health care professionals.

As noted in our March 1, 2001 letter, NMPC had an opportunity in 1996 to address this situation prior to NRC involvement. The OI investigation revealed that the CSO had confided to a station shift supervisor (SSS) that the CSO was taking prescription medications at the time. Although the SSS advised the CSO to report this information to the medical department, the SSS never followed up to inform the medical department or to check if the CSO informed the medical department. In your March 31, 2001 response, you indicated that the SSS in question (1) did not realize that it was a requirement to follow up to ensure that the individual had notified FFD personnel, (2) believed that the medication being used was not a detriment to the individual's performance of shift duties, and (3) continued to observe the CSO's performance of licensed duties. You also indicated that the SSS now recognizes that he, as a supervisor, must notify the Site Medical group in accordance with the procedure and then continue to monitor the specific situation.

This case involved a licensed official (the licensed CSO) creating inaccurate information that was required to be maintained by NMPC, and which had the capability of influencing your Medical Review Officer. Therefore, the violation has been classified at Severity Level III in accordance with the Section C.2 of Supplement VII or the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy in effect at the time this violation occurred and was identified, a base civil penalty in the amount of \$55,000 is considered for a Severity Level III violation. Because the Severity Level III violation was deliberate, 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. In this case, the NRC decided that credit for *Identification* is warranted, even though there was an earlier missed opportunity for detection, since you ultimately did identify, in March 1998, that (a) the CSO was using prescription medications and was under the care of two health care professionals, and (b) the health history forms were inaccurate. Credit for *Corrective Action* is also warranted because your corrective actions were considered prompt and comprehensive. These actions included: (1) removal of the CSO, who is no longer employed by NMPC, from licensed duties in March 1998; (2) training of licensed operators, including the supervisor in question, on the notification

requirements pertaining to the taking of prescription medications; and (3) revision of FFD procedures to clarify the obligations of a licensed operator to inform management of the use of prescription medications. Therefore, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case.

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 your March 31, 2001 letter. 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.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure, and your response will be available electronically for public inspection in the NRC Public Document Room or from the Publically Available Records (PARS) component of the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Reading Room).

Sincerely,

/RA/

Hubert J. Miller
Regional Administrator

Enclosure: As Stated

Docket No. 05000220
License No. DPR-63

cc w/encl:

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OFFICE	OI	RI/RA	OE		
NAME	Bletts (BRL)	Hmiller (HJM)	Fcongell (JGL for)		
DATE	4/30/01	5/1/01	5/1/01 via phone		

NOTICE OF VIOLATION

Niagara Mohawk Power Corporation
Nine Mile Point, Unit 1

Docket No. 50-220
License No. DPR-63
EA-01-011

During an NRC investigation initiated on May 12, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the particular violation is set forth below:

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

10 CFR 55.27 requires licensee's to document and maintain the results of medical qualification data, test results, and each operator's medical history for the current license period and to provide the documentation to the NRC upon request.

Contrary to the above, on December 11, 1996, and October 8, 1997, a licensed chief shift operator (CSO) completed and signed health history forms, required for documentation of licensed operator Fitness-For-Duty determination per 10 CFR 55.27, that were not complete and accurate. Specifically,

1. the CSO, on a health history form signed and dated by the CSO on December 11, 1996, checked "No" to the following two questions: "Taken or are you currently taking any medications (prescription and/or non-prescription)," and "Been treated for any illnesses or injuries," and;
2. the CSO, on a subsequent health history form signed and dated by the CSO on October 8, 1997, checked "No" to the following question: "Presently under a health care provider's care for any condition," and did not list any medications in response to the following question: "List any medications you are currently taking (prescription and/or over the counter)."

These answers provided by the CSO on those health history forms were inaccurate and incomplete because, at the time the CSO filled out the health history forms, the CSO was taking prescription medications and was being treated by two health care professionals. These inaccurate answers were material because they misled the Niagara Mohawk Power Corporation's Medical Review Officer and precluded him from making a fully informed decision regarding the CSO's fitness-for-duty.

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

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 the March 31, 2001 letter. 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," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region I, and a copy to the NRC Resident Inspector at the Nine Mile Point Nuclear Station, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). 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. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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.

Dated this 2nd day of May 2001