

UNITED STATES OF AMERICA

EA-81-08
Recd 12/22/80

NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
NIAGARA MOHAWK POWER CORPORATION)
)
(Nine Mile Point Nuclear Station Unit 1))

Docket No. 50-220

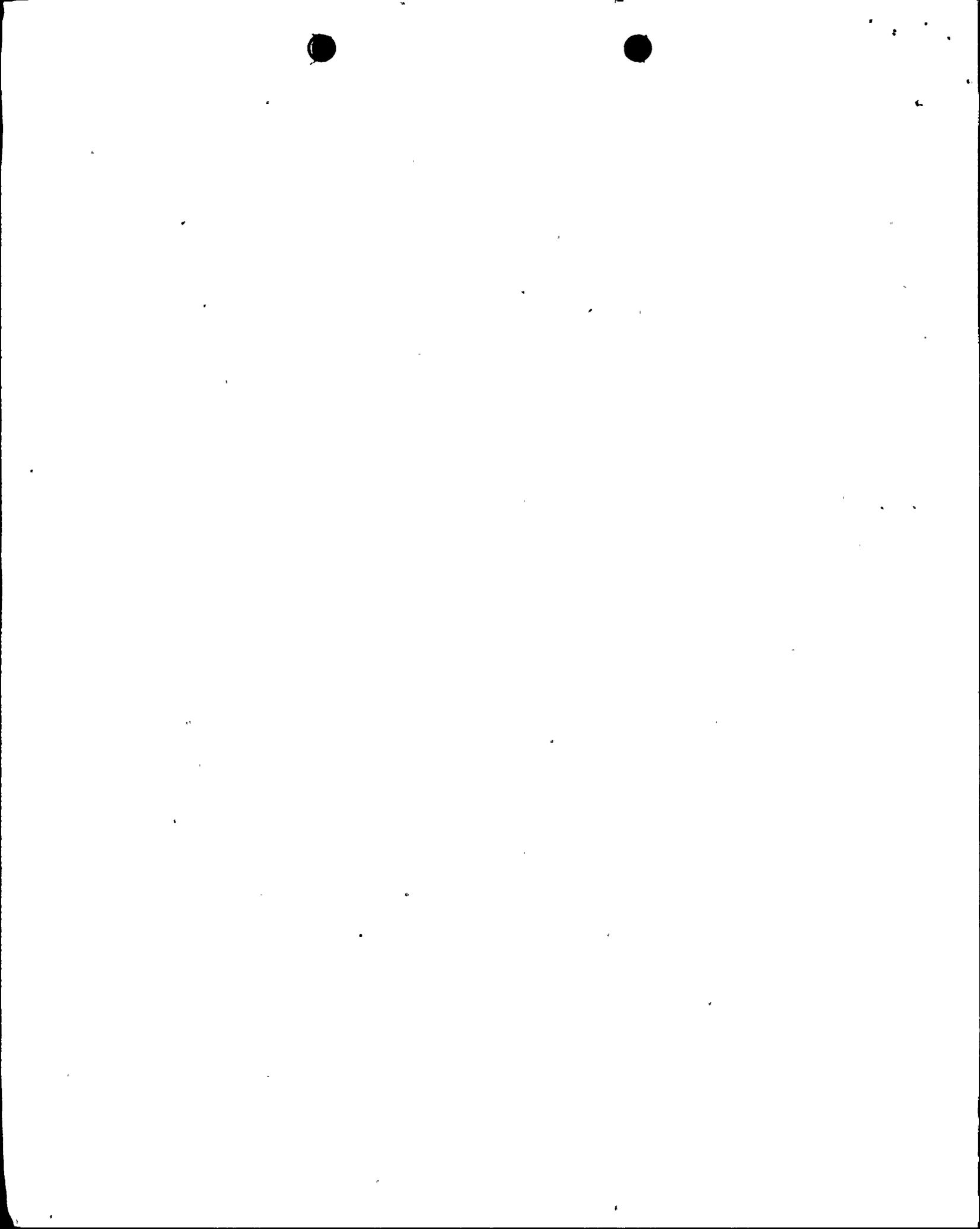
RESPONSE TO NOTICE OF VIOLATION AND
NOTICE OF IMPOSITION OF CIVIL PENALTIES

Pursuant to the provisions of Sections 2.201 and 2.205 of the Nuclear Regulatory Commission's (NRC) "Rules of Practice" Part 2, Title 10, Code of Federal Regulations (CFR), Niagara Mohawk Power Corporation (NM) hereby submits its response to the Notice of Violation and Notice of Proposed Imposition of Civil Penalties, designated Appendices A and B, respectively, of the NRC's Office of Inspection and Enforcement letter to NM dated November 26, 1980.

NM hereby protests in their entirety the civil penalties of \$225,000 proposed in the letter of November 26, 1980 from Victor J. Stello, Jr. and the preemptory direction in the Order to Show Cause of November 26, 1980 that Thomas J. Perkins "shall not be involved with nuclear matters [undefined] for Niagara Mohawk Power Corporation."

The extraordinary penalties and proposed management intrusion on the operation of NM's Nine Mile Point Unit 1 (license No. DPR-63) is, as publicly

* / Said letter contained also Appendix C entitled "Order for Modification of License (Effective Immediately) and Order to Show Cause" which will be referred to and discussed herein but which will be the subject matter of a separate, specific response.



noticed nationally in press and television media alike, one of the largest and most extreme penalties for "alleged violation" of the dictates of the Atomic Energy Act of 1954, as amended. The damage to NM as a responsible operator of a licensed nuclear plant has already and irretrievably been done. As shown in detail in the remainder of this pleading, NM denies categorically each and every violation set forth in the letter of November 26, 1980 from the NRC Director of Office of Inspection and Enforcement as well as its accompanying Notice of Violation.

The above documents constitute to date the largest most awesome unjustified damnations of a licensed operator of a nuclear electric generating plant yet publicized. The charges suggest a wish for near immolation of the operators of that nuclear plant without regard to their exceptional record of unquestioned safe and healthful operation of Nine Mile Point Unit 1 station from its initial commercial operation 11 years ago to date. The tragic consequences of the Director's proposed action are reflected in the unsolicited memorandum from the Nine Mile Point Unit 1 personnel attached hereto as Appendix A.

The public health and safety have at no time been endangered by the operators of Nine Mile Point Unit 1 in their compliance with one of the 23 Category A items stemming from the Three Mile Island experience.

The details underlying the incidents follow.

I. BACKGROUND

(a) The Task Force which was assigned to the Three Mile Island Unit 2 (TMI-2) incident published its report, NUREG-0578, "TMI-2 Task Force



and Short-Term Recommendations", in July 1979, and therein set forth a schedule (Table B-1) for the implementation of short-term recommendations for operating plants and plants in Operating License (OL) review. Table B-1 contained 23 recommendations for changes with implementation dates for all Category A items on January 1, 1980 and January 1, 1981 for items designated as Category B. The high-range effluent monitor, Item 2.1.8.b, which is the subject matter of this proceeding, was designated a Category B item, and was scheduled for implementation in Table B-1 of NUREG-0578 for January 1, 1981.

(b) On September 13, 1979 a notice-letter was issued by staff of the NRC entitled "Followup Actions Resulting From the NRC Staff Reviews Regarding the Three Mile Island Unit 2 Accident." The letter recited that, based upon the NRC's staff review, it was the purpose of the letter to set forth the Office of Nuclear Reactor Regulation's (NRR) requirements based upon the (NUREG-0578) Task Force Report which the letter describes as having made 20 new licensing requirements and three rulemaking matters covering twelve broad areas. After the receipt of comments the NRC staff concluded that additional actions were appropriate for the operation of nuclear power plants.

The September 13, 1979 notice-letter concluded that all operating reactor licensees should begin to implement the actions contained in

* / It is important to note that the Advisory Committee on Reactor Safeguards (ACRS) recommended to the Staff that the effective implementation of NUREG-0578 would require a more flexible and perhaps extended schedule than proposed by the Task Force as a comment to the September 13, 1979 letter.



NUREG-0578 as modified and/or supplemented by its additional recommendations set forth in items (a) through (f) of the letter and as itemized in the attached enclosures (1) through (9) of said letter. Without detailing all the total changes and the wide range of additional work efforts required by the letter and enclosures, a brief description of the areas of the NUREG Task Force Report which were referenced in the letter which pertain to Item 2.1.8.b indicate that on September 13, 1979 the installation of high range monitors was still listed as a Category B item and still scheduled for implementation on January 1, 1981.

(c) On October 18, 1979 a letter from Gerald K. Rhode, NM, to Darrell G. Eisenhut of the NRC set forth NM's proposed schedule for implementation of NUREG-0578 recommendations.

(d) On October 30, 1979 a notice-letter was issued by staff of the NRC to All Operating Nuclear Power Plants. Again several modifications and clarifications of NUREG-0578 were required. Of the thirteen items discussed and modified in the letter, Item 2.1.8.b was included. The October 30, 1979 letter for the first time introduced the requirement that interim "fix" procedures designated Category A be developed to quantify the release of noble gases on the assumption that an accident would cause the existing monitors to go off scale. It was further required that the interim fix should be in place by January 1, 1980. The interim method of quantification was only to serve as a provisional fix "with more detailed exact methods to follow."^{*}

^{*} / The letter assumed that more precise or accurate methods of quantification would be developed by January 1, 1981; however, recently issued NUREG-0737 (October 31, 1980) now has delayed implementation until January 1, 1982.

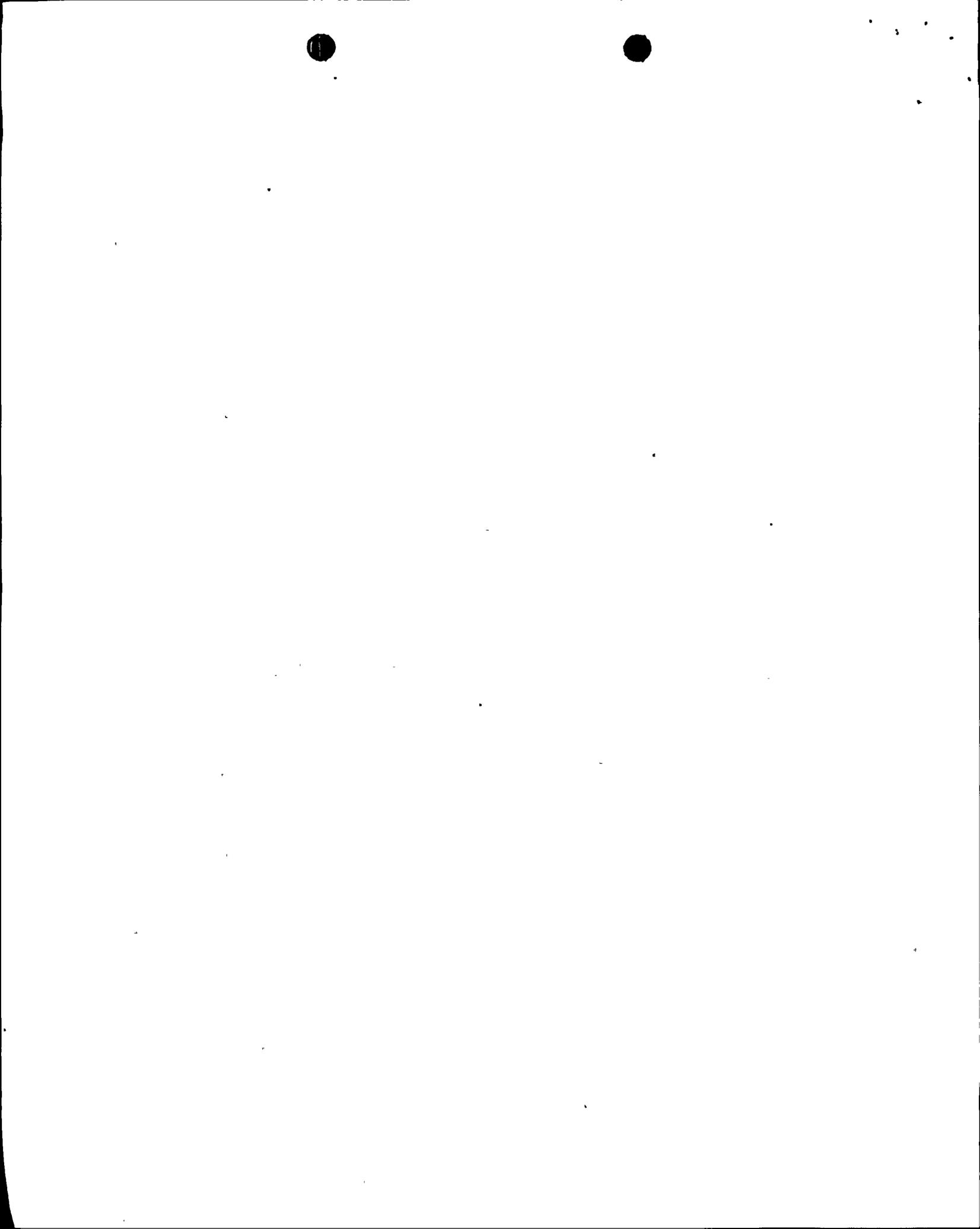


Table 2.1.8.b.1 entitled "Interim Procedures for Quantifying High Level Accidental Radioactivity Releases" attached to the October 30, 1979 letter sets forth examples of procedures to be used for quantification of noble gases as follows:

- Preselected location to measure radiation from the exhaust air, e.g., exhaust duct or sample line.
- Provide shielding to minimize background interference.
- Use of an installed monitor (preferable) or dedicated portable monitor (acceptable) to measure the radiation.
- Predetermined calculational method to convert the radiation level of radioactive effluent release rate.

(e) On December 31, 1979 in a letter from Donald P. Dise, NM, to Harold R. Denton (NRC), the status of implementation of new requirements of NUREG-0578, as modified, supplemented and amended, including 2.1.8.b, was forwarded to the Commission. The letter basically stated NM's intention to comply with NRC requirements and the interim fix for Item 2.1.8.b and described the methodology proposed to be utilized. The enclosure to the status letter stated with respect to 2.1.8.b that quantification of higher level noble gas releases will be provided by means of a portable gamma survey instrument and that background radiation will be shielded by means of a lead cave built around the detector.

(f) It seems evident that the December 31, 1979 letter was passed in the mail, however, by an Order to Show Cause, issued January 2, 1980,



from the NRC addressed to Donald P. Dise, NM. The order required NM to show cause why it should not implement by January 31, 1980 the requirements of NUREG-0578 as amended and supplemented regarding short term lessons learned including Item 2.1.8.b.

(g) On January 22, 1980, NM responded to said Order to Show Cause by affidavit executed by its Executive Vice President, James Bartlett. The affidavit and schedule attached to the affidavit-answer to show cause with respect to Item 2.1.8.b indicated that implementation by NM of Category A requirements would be limited to procedures; it did not discuss how the interim fix was to be accomplished nor did it refer to or rely upon, implicitly or explicitly, the statements in NM's December 31, 1979 status letter.

(h) On March 12, 1980 a group of NRC representatives (NRR) visited the site and on March 21, 1980 an evaluation letter was received from the NRR staff who had inspected the site. The letter stated, "based on our review we conclude that you have satisfactorily met all Category A requirements." In an attachment to that letter, Item 2.1.8.b was specifically addressed and the same conclusion was reached.

(i) On May 12, 1980 by letter of Donald P. Dise, NM, to Harold R. Denton, NRC, NM recited its previous NUREG-0578 commitments and set forth NM's understanding that no additional information was required by the NRC Staff to determine or assess the modifications made to Nine Mile Point Unit 1 pursuant to existing regulations.



(j) On June 26, 1980 by letter of Donald P. Dise, NM, to Harold R. Denton, NRC, NM further clarified its position in connection with the installation of additional equipment or items pursuant to requirements of NUREG-0578.

(k) On July 2, 1980 by generic letter to all Boiling Water Reactor Licensees the NRC staff for the first time indicated that it had completed its review of its evaluation of licensees' actions taken to satisfy Category A items contained in NUREG-0578.

(l) During October 3 - 10, 1980 an announced inspection of the site by an NRC Health Physics Team was conducted to evaluate NM's radiation protection program at Nine Mile Unit 1. The inspection report 50-220/80-11 has yet to be received by NM.

(m) On October 8, 10 and 20 - 31, 1980 additional unannounced inspections by the Office of Inspection and Enforcement (I & E) were conducted at the site. The report of these inspections has been designated inspection report 50-220/80-18. Further investigations by the team were conducted on November 12, and November 18, 1980.

(n) On October 17, 1980 NM received an immediate action letter from the NRC requiring the implementation of the subject Category A 2.1.8.b item prior to the close of business on October 20, 1980. NM responded to the immediate action letter by letter executed by James Bartlett dated October 23, 1980 which informed the NRC that compliance had been



completed on October 20, 1980 as required. ^{*/}

(o) On October 20, 1980 to November 1, 1980 and on November 18, 1980 an investigation team from the NRC Office of Inspection and Enforcement investigated NM's compliance with Category A items at Nine Mile Unit 1. The results of the investigation are set forth in investigation report 50-220/80-17. It was during this time period that the investigators obtained affidavits of NM witnesses which are set forth in and made a part of investigation report 80-17.

(p) By letter dated November 26, 1980, the NRC Office of Inspection and Enforcement forwarded to Niagara Mohawk President William J. Donlon a letter with three appendices containing (a) a "Notice of Violation" for making allegedly material false statements, (b) "Notice of Proposed Imposition of Civil Penalties" in the amount of \$225,000, and (c) "Order for Modification of License (Effective Immediately) and Order to Show Cause". The immediately effective amendment of NM's operating license required the removal of Thomas J. Perkins from involvement with nuclear matters for NM. In addition, the Order prescribed that procedures should be implemented to ensure the receipt of accurate and timely information to higher management in the NM system. The Order to Show Cause required licensee to show cause why

^{*/} It must be noted that at all times compliance with what turned out to be the NRC's interpretation (based upon its October 17, 1980 letter to NM) of its requirements for the provisional or interim fix and on which the NRC allegations of a materially false statement are based would have cost NM approximately \$3,400. Based upon the amount of work involved and the cost to comply, this would hardly be a risk that an operator would consciously take if, in fact, a clear interpretation of the NRC's requirements of the interim fix existed prior to October 17, 1980.



James Bartlett should not be similarly removed from involvement in nuclear matters.

In sum, the time period from the July, 1979 publication date of NUREG-0578 and its implementation dates for Category A items of either December 31, 1979 or January 31, 1980 was a period of rapid regulatory change in the aftermath of the accident at Three Mile Island. Interpretations and clarifications by the NRC of its own requirements simply did not keep pace with their issuance. This failure on the part of the NRC occurred not only with respect to NUREG-0578 and its several modifications (including Item 2.1.8.b), but also in connection with the large volume of other regulations issued and made effective during the same time period.*

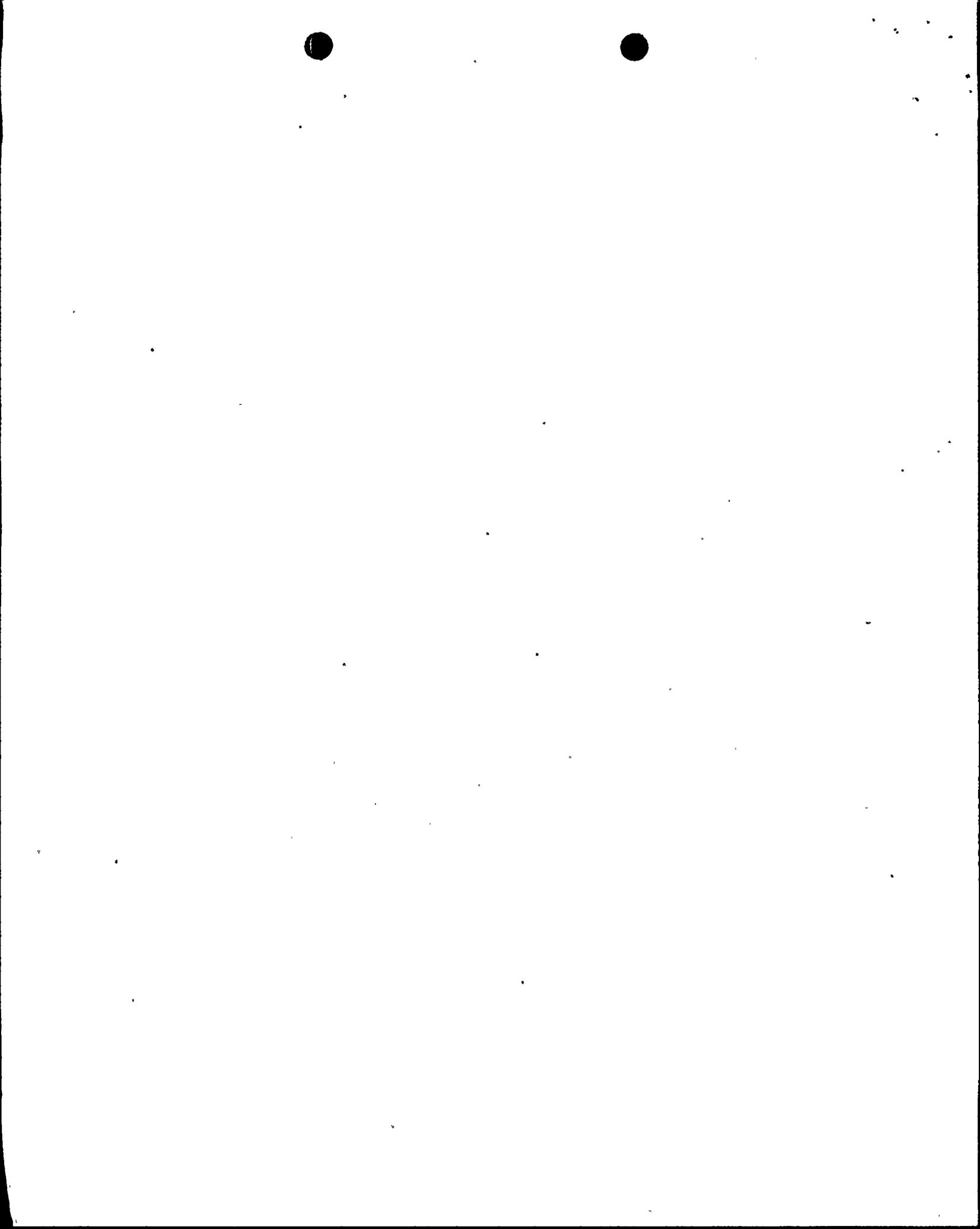
There follows below NM's response to the specifics charged in the Notice of Violation issued herein, including its response to the Notice of Proposed Imposition of Penalties. While many of the comments noted below are also pertinent to the Order to Show Cause, NM will address the latter by its Answer due on or before January 5, 1981.

II. NOTICE OF VIOLATION

The Notice of Violation issued herein charges that " . . . it appears that one of your (Licensee's) activities was not conducted in full compliance with NRC Order To Show Cause dated January 2, 1980 . . .".

The January 2, 1980 Order to Show Cause stated in relevant part:

* / To date, despite NM's specific request for same, acceptance criteria for Category A items of NUREG-0578 have not been issued or supplied to NM by the NRC.



"...IT IS HEREBY ORDERED THAT the Licensee show cause, in the manner hereinafter provided, why it should not:

By January 31, 1980, implement all 'Category A' requirements (except the requirement of 2.1.7.a of NUREG-0578) referred to in Part II of this Order, except those for which necessary equipment is shown, by appropriate and timely documentary justification to the Director, Office of NRR, to be unavailable, or in the alternative, place and maintain its facilities in a cold shutdown or refueling mode of operation. 'Category A' requirements not implemented by January 31, 1980, owing to the unavailability of necessary equipment shall be implemented within 30 days of the date such equipment becomes available but no later than June 1, 1980."

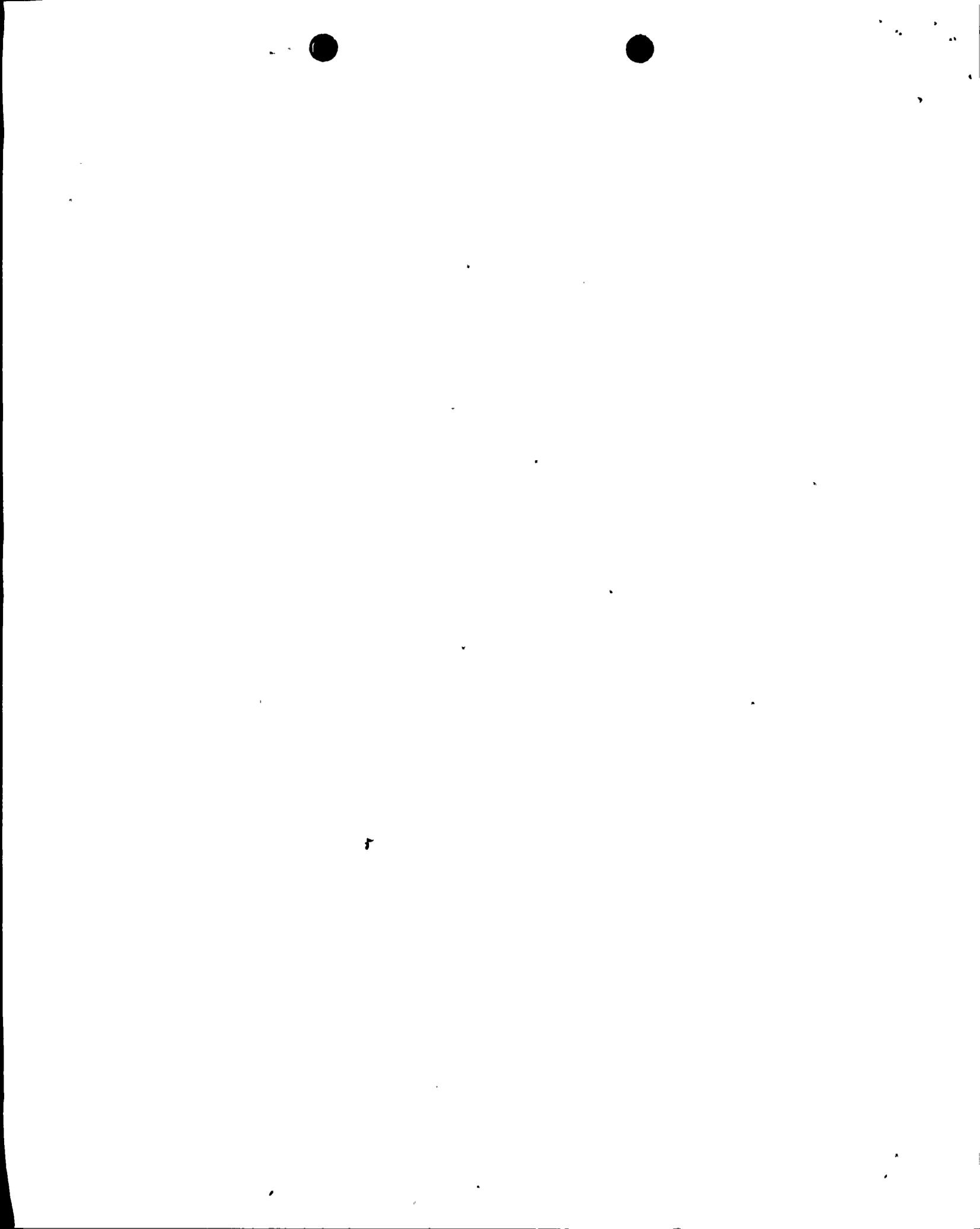
As further recited in the Notice of Violation (pp. 1-2), the January 2, 1980 Order to Show Cause:

" . . . incorporated the October 30, 1979 clarification letter on the subject of 'Category A' requirements. 'Category A' Item 2.1.8.b as described in this letter, required the licensee to provide by January 31, 1980, a method to quantify noble gas releases as high as 10,000 curies per second, which meets the following requirements:

Licensees are to implement procedures (emphasis supplied) for estimating noble gas and radioiodine release rates if the existing instrumentation goes off scale.

Examples of major elements of a highly radioactive effluent release special procedures (noble gas).

- Preselected location to measure radiation from the exhaust air, e.g., exhaust duct or sample line.
- Provide shielding to minimize background interference.
- Use of an installed monitor (preferable) or dedicated portable monitor (acceptable) to measure the radiation.



- Predetermined calculational method to convert the radiation level to radioactive effluent release rate."

Specifically, the Notice of Violation charges that the statement in NM's January 22, 1980 Answer To Show Cause, submitted in response to the January 2, 1980 NRC Order to Show Cause " . . . stating that the 'Category A' Item 2.1.8.b had been completed by December 31, 1979 is a material false statement." The Notice of Violation goes on to state:

"It is false in at least two respects: first, neither a high range survey instrument was installed nor was such instrument provided on a dedicated basis; and secondly, a lead cave to shield the instrument was not installed. This false statement and each of its subparts are material in that meeting the requirement was necessary to mitigate the consequences of a postulated accident and the absence of meeting this requirement by January 31, 1980 required shutdown of the facility."

The Notice of Violation goes on to allege in paragraph B) that NM operated Nine Mile Unit 1 for a period of 232 days between February 1, 1980 and October 8, 1980 "without a lead cave shield and without a portable gamma survey instrument installed or dedicated."

As a consequence of the alleged violations, the NRC proposes to impose cumulative civil penalties in the amount of \$225,000. The Notice of Violation requires NM to respond with respect to each item of alleged noncompliance in the manner following:

"(1) admission or denial of the alleged item of non-compliance; (2) the reasons for the item of noncompliance if admitted; (3) the corrective steps which have been taken and the results achieved; (4) corrective steps which



will be taken to avoid further items of noncompliance; and
(5) the date when full compliance will be achieved."

III. SUMMARY OF NIAGARA MOHAWK'S
POSITION IN RESPONSE TO THE NRC'S
NOTICE OF VIOLATION

With respect to the Notice of Violation, NM states that no material false statements were made either in its January 22, 1980 formal Answer to Show Cause to the Order to Show Cause issued January 2, 1980 or in the December 31, 1979 status letter; that it was at all times responsive to and in compliance with the requirements of NUREG-0578, Item 2.1.8.b, as clarified October 30, 1979; that said compliance was achieved on December 31, 1979; and that at no time was the public health and safety endangered.

a. The January 22, 1980 Answer to Show Cause

NM's Answer to Show Cause dated January 22, 1980 as respects Category A Recommendations states in relevant part the following:

"A list of the Category A Recommendations, their applicability or non-applicability to Niagara Mohawk's Nine Mile Point Unit 1 and the date of compliance with those Recommendations are shown in Exhibit A to this Answer. Exhibit A is hereby incorporated by reference."

The referenced portion of Exhibit A pertaining to Item 2.1.8.b states as follows:

NINE MILE POINT UNIT 1
IMPLEMENTATION OF "CATEGORY A"
NUREG-0578 REQUIREMENTS

<u>Requirement</u>	<u>Title</u>	<u>Implementation Category (1)</u>	<u>Date Implementation Completed</u>
2.1.8.b	High Range Radiation Monitors Effluents-Procedures	A	December 31, 1979



In response to paragraph A) of the Notice of Violation, the January 22, 1980 Answer to Show Cause states that the requirements of NUREG-0578 with respect to Item 2.1.8.b were complied with as of December 31, 1979. That sworn statement was and is true. Nowhere in the January 22, 1980 Answer to Show Cause do the words "a high range survey instrument was installed . . . on a dedicated basis" or the words ". . . a lead cave to shield the instrument was installed" appear. In addition, as more fully described below, there is no dispute that procedures were in effect on December 31, 1979 when the Answer to Show Cause stated they had been implemented.

It is, therefore, patent error for the NRC to charge that the January 22, 1980 Answer to Show Cause, sworn to under oath by its Executive Vice President James Bartlett, contained a material false state-
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ment as alleged by the NRC in the Notice of Violation.

Moreover, the NRC is again in error when it alleges:

"B) Contrary to the above the licensee operated its facility for 232 days during the period of February 1, 1980 to October 8, 1980 without a lead cave shield and without a portable gamma survey instrument installed or dedicated. (This had the potential for aggravating an accident. Each day this condition existed constitutes a separate violation and a civil penalty of \$5,000 is proposed for each). (Cumulative civil penalties - 232 days between February 1, 1980 and October 8, 1980 - 232 x \$5,000 = \$1,160,000.)"

*/ For a definitive discussion of this term, see Virginia Electric and Power Company (North Anna Units 1 and 2) ALAB - 324, 3 NRC 347 (1976) (Majority Opinion).



NUREG-0578, as clarified by the NRC letter dated October 30, 1979, provided alternatively for a dedicated portable monitor and the provision of shielding to minimize background interference. As more fully described below, NM complied with these requirements by December 31, 1979. Consequently, NM denies the allegations contained in both paragraphs A) and B) of the Notice of Violation quoted or referenced above.

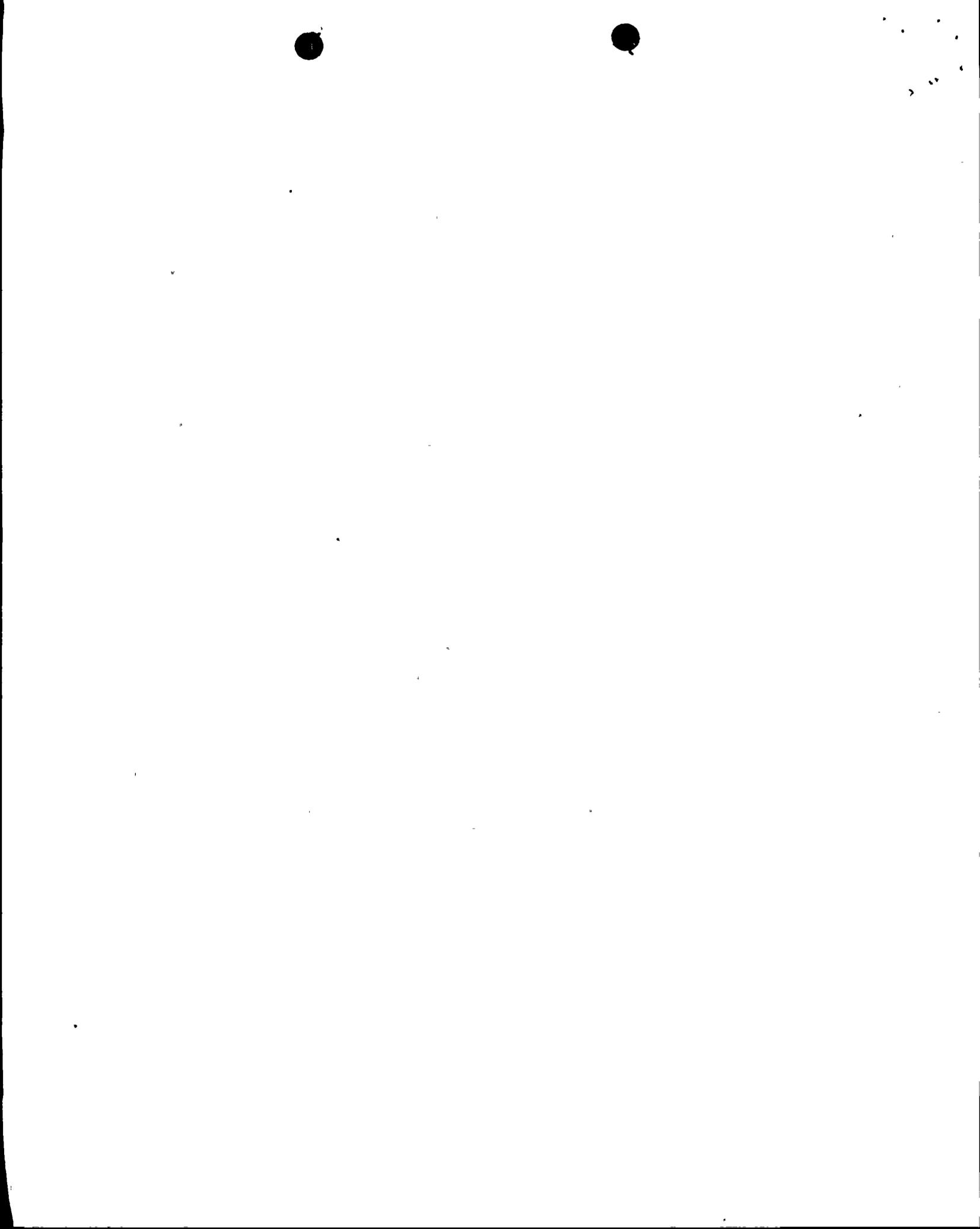
b. The December 31, 1979 Status Letter

In apparent recognition of the fact that the January 22, 1980 Answer to Show Cause failed to support the allegation that a false statement had been made, the Notice of Violation referred to the December 31, 1979 status letter from Licensee to the NRC (Mr. Donald P. Dise to Mr. Harold R. Denton) which letter, as recited in the Notice of Violation (p. 2) stated in relevant part as follows (pp. 23-24):

"By January 1, 1980 the following provisional steps will be taken:

. . . Quantification of higher level noble gas releases will be provided by means of a portable gamma survey instrument. This instrument will be installed such that it will monitor a portion of the sample line to the existing stack monitors . . ." and "Background radiation will be shielded by means of a lead cave built around the detector." . . .

Significantly, the December 31, 1979 status letter on its face antedated the issuance of the January 2, 1980 Show Cause Order and, for this reason, in no way supports an allegation that its contents were submitted in response to that Show Cause Order. To the extent that the Notice of Violation infers



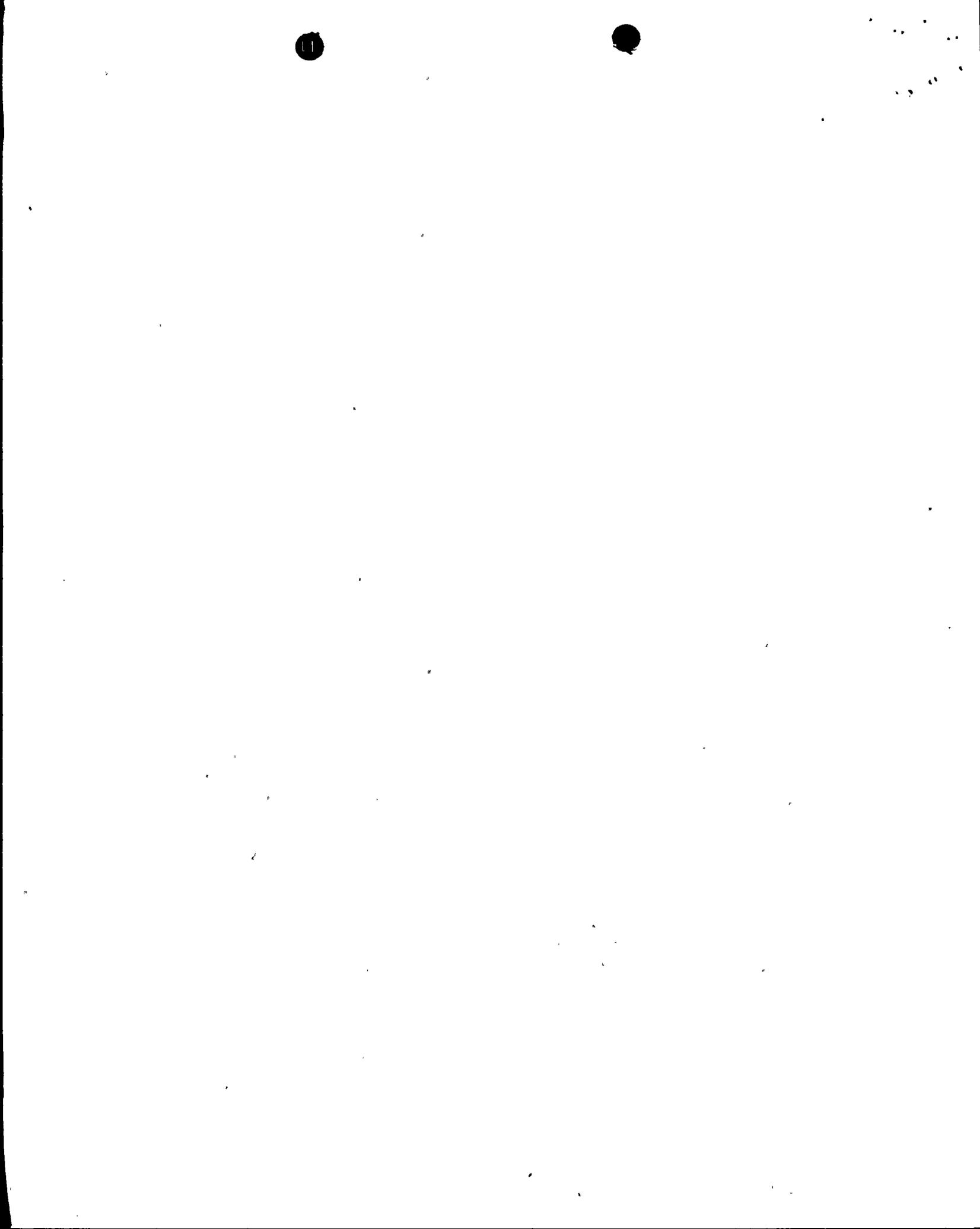
otherwise, it is in error. In short, the December 31, 1979 letter is precisely what it was purported to be -- a status letter -- nothing more or less.

It thus becomes necessary to examine the Licensee's actions and intentions in response to NUREG-0578 (Item 2.1.8.b) as clarified by the aforementioned letter dated October 30, 1979.

To place in perspective the issues presented, NM notes that, assuming, arguendo, that every word and every interpretation by the NRC of the host of post Three Mile Island Guidelines and Requirements which the NRC issued during the latter part of the year 1979 were absolutely correct, NM was in compliance with all requirements. Specifically, NM states that it had complied with those requirements which pertained to the interim fix procedures described and set forth in the NRC October 30, 1979 letter to NM even before the issuance date of the January 2, 1980 Order to Show Cause with respect to the matters here in issue.

In the NRC October 30, 1979 letter, the following are set forth in Table 2.1.8.b.1 as examples of interim procedures:

- (1) Preselected location to measure radiation from the exhaust air, e.g., exhaust duct or sample line.
- (2) Provide shielding to minimize background interference.
- (3) Use of an installed monitor (preferable) or dedicated portable monitor (acceptable) to measure the radiation.
- (4) Predetermined calculational method to convert the radiation level to the radioactive effluent release rate.



Taken one at a time -

(1) There is no dispute that NM had established at the sample line a preselected location to measure radiation. This was the location where the lead brick had been placed around the sample line to provide shielding with a location hole in the brick to insert the probe from the monitor proposed by NM.

(2) There is no doubt that shielding was provided by the lead brick to minimize background interference.

(3) NM chose to use a dedicated portable monitor which is clearly an acceptable option pursuant to the NRC's own examples.

(4) As testified to by NM representatives, a procedure and calculational method were at all times in place to satisfy this requirement.

Of course, the Notice of Violation alleges that NM violated Section 186 of the Atomic Energy Act of 1954, as amended, by making a material false statement, and it alleges that NM operated Nine Mile Point Unit 1 in violation of the requirements of NUREG-0578 as attempted to be clarified in the NRC's October 30, 1979 letter. NM has demonstrated that NRC is in error in both respects. If, however, the issues are perceived as whether NM complied with the commitments contained in the status letter of December 31, 1979, two responses are important. First, a Notice of Violation may not be issued for violating a commitment not required by the Act, the NRC's regulations or the conditions of the license (10 CFR 2.201). Second, even if that were



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not the case, it is of critical importance to ascertain the meaning attributed by NM to the words "portable" (gamma survey instrument), "will be installed", "dedicated" and "(b)ackground radiation will be shielded by means of a lead cave built around the detector." NM's actions as described by those words were consistent with the requirements of Item 2.1.8.b, as specifically stated in NRR's "Evaluation of Licensee's Compliance with Category A, items of NRC Recommendation Resulting from TMI-2 Lessons Learned" dated March 21, 1980 at page 8. Therefore, NM's actions unquestionably satisfied the requirements of NUREG-0578 and, for the reasons noted below, substantially conformed to the manner of compliance outlined in its December 31, 1979 status letter.



IV. RESPONSE TO ALLEGATION THAT HIGH-RANGE SURVEY INSTRUMENT WAS NEITHER INSTALLED NOR DEDICATED

POINT I

No question has been raised in connection with the acceptability of the designated portable high-range survey instrument. Table 2.1.8.b.1 entitled "Interim Procedures For Qualifying High Level Accidental Radio-activity Releases" specifically states that the use of a dedicated portable monitor is acceptable to measure radiation. This option was utilized by NM. The above-referenced table does not require that the portable monitor be permanently installed nor do any other regulations or directives of the NRC so require.

POINT II

The Order to Show Cause issued January 2, 1980 by the NRC does not require nor did it discuss the permanent installation of the monitor. The answer to said Order to Show Cause did not, in any manner, directly or indirectly, indicate that a portable monitor would be installed as part of the interim or temporary "fix" which is the subject matter of these two documents.

As noted above, the only reference to the use of the word "installed" can be found in the status letter dated December 31, 1979 in which Mr. Dize states in the response to Item 2.1.8.b NUREG recommendation, "Increased Range of Radiation Monitors", that the instrument (portable survey instrument)



"will be installed such that it will monitor a portion of the sample line to the existing stack monitors". It was the intention of this statement which expressly contemplated the use of a portable instrument, to install a portable instrument when required to take the necessary readings. It was not the intention of NM to permanently install this instrument during the period of the temporary or provisional fix. It was the intention of the Company to utilize this portable monitor as it does other portable monitors, i.e., to remove the monitor from a predetermined location to the sample line (where the lead brick was located) and to insert the monitor to obtain the necessary readings or measurements as required. The procedure proposed by NM, including the movement of the portable instrument from a predetermined location to the lead brick in place on the sample line and at that point installing or inserting the monitor to obtain measurements, again is a documented and accepted procedure by the NRC.

Finally, in NM's view, the characterization in the December 31, 1979 status letter that the acceptable option, i.e. that the measuring instrument was to be a "portable" device, is inconsistent with a conclusion that it will be installed on a permanent basis. While the word "installed" was used by Mr. Dise, the NRC has, in NM's view, misconstrued that word in that no recognition or significance whatever was attributed to the word "portable". Certainly, the term "portable" suggests a mobility quite different from a configuration resulting from an object which has been or will be permanently



placed in a fixed rigid position. In the final analysis, it appears that the charges levelled rest largely on a choice of words employed. Certainly, the words chosen, considered in their full context, do not warrant or in any manner support an allegation of a material false statement.

POINT III

DEDICATED

A further issue is then raised in the Notice of Violation stating that NM made a materially false statement in its Answer to Show Cause dated January 22, 1980 because the portable instrument was not "dedicated". It must be pointed out again that the Answer to Show Cause contained no such statement and that, accordingly, the allegation that NM made a materially false statement cannot be substantiated. The October 30, 1979 clarifying letter to all Operating Nuclear Power Plants, Table 2.1.8.b.1, stated that a dedicated portable monitor to measure the radiation was acceptable and could be used. The apparent interpretation of the word "dedicated" by the Director of I & E was that the portable monitor would be solely and exclusively used to measure the radioactive effluent release at a preselected location. This meaning, however, was not and is not NM's interpretation of this word. Its intention was to use, during the interim fix, the high-range survey monitor provided in the emergency In-Plant Survey Kit (emergency kit) to obtain readings. The emergency kit was located only some



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400 feet from the preselected location permitting a response time of approximately ten minutes to position the monitor. Although the use of this instrument for this purpose was made clear to the NRC Appraisal Team, and the Appraisal Team determined the referenced instrument to be present in the emergency kit, the Notice of Violation erroneously contends that a high range survey instrument was not provided on a dedicated basis. The NM intention, while the instrument could be used for other purposes, was to dedicate the device for the primary purpose of measuring the noble gases at the preselected location when required.

The NM interpretation of the word is really no different from that of the NRC as it has applied the term "dedication" in other circumstances or cases. For example, in the September 13, 1979 notice letter to all Operating Nuclear Power Plants from the NRC, issued by Darrell G. Eisenhut, Acting Director, Division of Operating Reactors, which addressed the subject follow-up actions resulting from the NRC Staff reviews regarding the Three Mile Island Unit 2 accident, Enclosure 2 of said letter, at page 6 thereof, utilizes the term "dedication" in the same manner interpreted by NM when it discusses the dedication of personnel. It states in pertinent part as follows:

"2. Dedication

Personnel should be dedicated to the function of safety monitoring of operating experience as their primary responsibility and duty." . . . (emphasis supplied)

It is clear that in that instance the NRC's interpretation of "dedication" is the same as that of NM's in that it concludes that a dedicated function or responsibility need not be exclusive. This interpretation confirms the accuracy



of the NM position and indicates the inconsistency of the present position of the Director of I & E. Moreover, the very presence of the instrument in the emergency kit constituted a "dedication" of that device in that the function to be performed by the instrument would be in response to one of the purposes underlying the need and requirement for maintaining the emergency kit, particularly since during the period in question (since January 1, 1980) two to seven additional monitoring instruments have been available at all times to perform other required high-range surveys.



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V. RESPONSE TO ALLEGATION OF
FAILURE TO INSTALL A LEAD CAVE

The October 30, 1979 clarification letter required licensees to "Provide shielding to minimize background interference."

The facts indicate that NRC approved procedures had been followed by providing a portable high-range survey instrument, adequately shielded by the installation of a lead brick, by December 31, 1979. The configuration of the lead brick, the sample line and the portable high-range survey instrument, when inserted in the brick, complies with the provisions of NUREG-0578 as amended and clarified. The required shielding was present in the form of the lead brick. While it can be argued that a difference may exist between a lead cave and the lead brick configuration, the differences in amount or efficiency of shielding between the two are not significant when existing sources are considered. The lead brick provides the necessary shielding to comply with Item 2.1.8.b. If a lead cave is utilized, an additional amount of radiation (a maximum of 8% from adjoining sample lines) could be eliminated. To place the foregoing in perspective, the maximum contribution of the 8% increase that is theoretically possible without a lead cave is well below the acknowledged margin of error in the NRC approved monitoring devices contemplated by Item 2.1.8.b.

In any event, the use of a lead brick rather than a lead cave theoretically will result in a higher, more conservative (on the side of public safety) reading.



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Further, it is important to note that with respect to Item 2.1.8.b, no NRC regulations or recommendations require the installation of a lead cave but require only that shielding be provided.

It is the position of NM, despite the fact that an insignificant difference between a lead brick and lead cave may exist, that for purposes of compliance with the requirements of NUREG-0578, the equipment utilized by the Company provided an identical function to that which would have been provided by a lead cave, thus explaining Mr. Perkins' statement in his affidavit of October 31, 1980 that he did not consider the presence or lack of presence of a lead cave on December 31, 1979 to be significant.



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VI. ANSWER PROTESTING THE IMPOSITION OF CIVIL PENALTIES

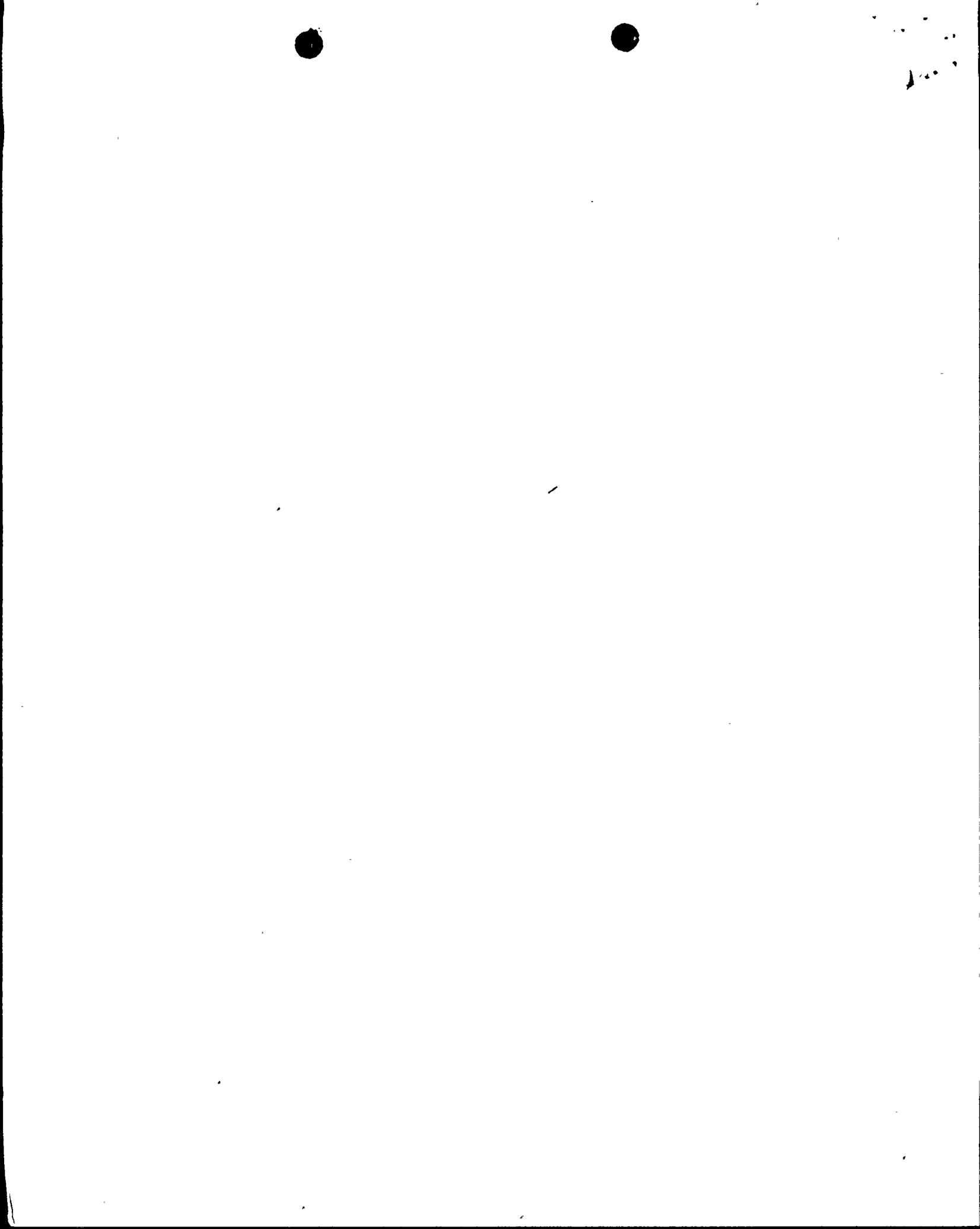
For the reasons set forth above, which are hereby incorporated by specific reference, NM denies in their entirety the items of noncompliance contained in paragraphs A) and B) of the Notice of Violation.

For the same reasons, NM states that the NRC has committed substantial errors in all material respects in paragraphs A) and B) of the Notice of Violation.

Further, the proposed civil penalties should not be imposed for the reason that NM has been in compliance with Item 2.1.8.b of NUREG-0578 since December 31, 1979 and for the reason that the January 22, 1980 Answer to Show Cause contained no false statements, material or otherwise.

No risk to the public health and safety was caused by any action alleged to have been taken or not taken by NM. A high-range radiation monitor was available and dedicated, as contemplated by the NRC in NUREG-0578, on December 31, 1979 and it was capable of measuring noble gas releases of up to 10,000 Ci/sec. Thus, the purpose of NRC's directives was accomplished in a timely fashion.

Finally, NM has shown that, contrary to the allegations made by the NRC's Office of Inspection and Enforcement, no material false statements were made by Mr. Bartlett, nor was the Atomic Energy Act of 1954, as amended, any NRC regulation, or license condition, violated by NM. For this and the foregoing reasons, NM neither perceives the need for nor advances any arguments in mitigation but, nevertheless, reserves its rights in this regard.



CONCLUSION

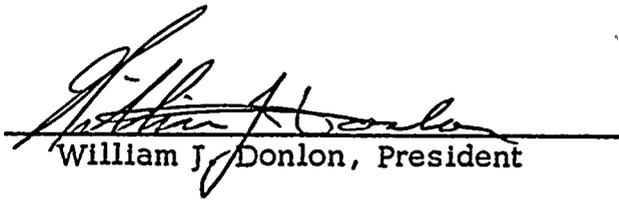
For the foregoing reasons, the Director of the Office of Inspection and Enforcement should:

- (a) Withdraw the Notice of Violation issued November 26, 1980 and dismiss the proceeding; and
- (b) Eliminate the civil penalties proposed in the Notices.

Respectfully submitted,

NIAGARA MOHAWK POWER CORPORATION

BY


William J. Donlon, President

Dated at Syracuse, New York
December 19, 1980.

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DISTRICT Nine Mile Point Unit #1

DATE December 3, 1980 FILE CODE

FROM The Undersigned

TO John G. Haehl, Jr.
William J. Donlon

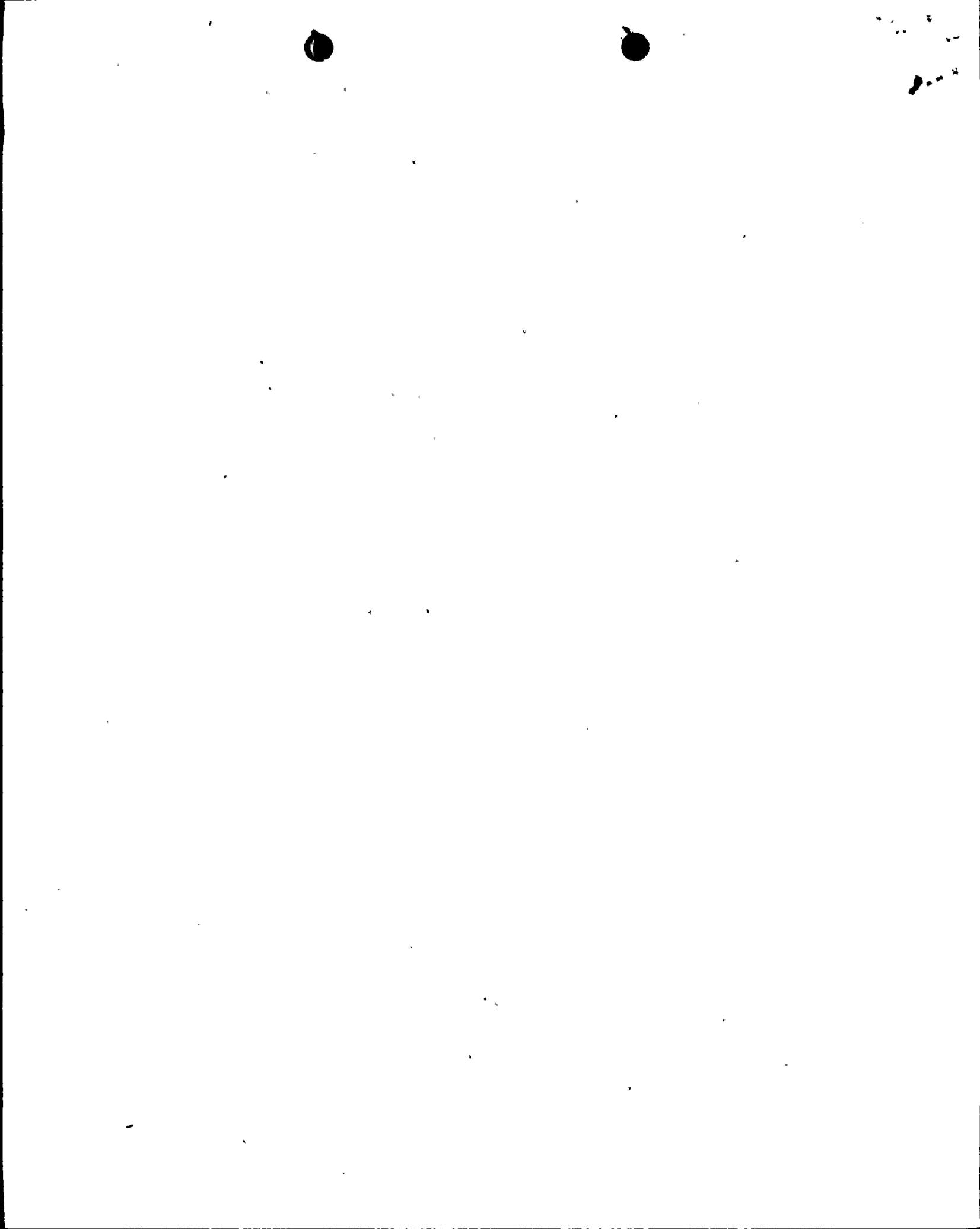
SUBJECT T.J. PERKINS

We, the undersigned, wish to express our concern over the recent events at Nine Mile Point. All of us have worked for Mr. Perkins for a number of years and have found him to be a man of character and integrity.

We also hope that every possible means will be pursued to vindicate Mr. Perkins and that he be reinstated in his former position as General Superintendent.

Sincerely,

Bob Ray	Alan De Jesus	Herk Master
Ed Duda	John Turner	A. Dimento
Paul Harrison	John Pavel	J.J. Zablonski
Donald Lilly	James H. Painty	James M. Dineen
T. Jermol	B.E. Taylor	P.E. Donoghue
Patricia H. Wright	Gene Reynolds	J.M. Spodzie
Marilyn Clynne	Mark Boyle	Herb Michaels
Cindy Tourot	Edward W. Smith	Terry Wood
John C. Albin	Anthony J. Duggan	Eric L. Townsend
Jacqueline C. Krakowka	Robert L. Rabin	Kurt L. Rosette
Carlton W. Miller	Ronis Layne	Clyde T. Newman
Mary T. Melhan	R.E. Conn	Andrew R. Andersen
Ed Kibicki	M.C. Hedrick	John Z. Kibben
Lawson	My Milliman	Mervin J. Wilson
Verne C. Upcraft	John Hawke	George J. Morgan
Sandra M. Foster	Roland W. Smith Jr.	John H. Smith
Jacqueline Lortie	George S. Shelling	Kurt H. Smith
	Ralph W. Gayne	Barbara J. Zopf
	Channing G. Hall	Bill Wambegon
	Phyllis Christie	Nancy J. Allen
		Deborah R. Schwab
		Michael J. Falise



Matr J Mcghee
 William F. Bandla
 David Kelley
 Amy E. Way
 Ralph L. Ingham
 Kurt Bessler
 Gary Holthouse
 Donald C. Soto
 Michael Starcliffe
 Michael J. Mascicca
 Gregory W. Stearns
 Brian J. ...
 Vernon R. Lucas
 Stephen G. Corbin
 Court Lilly
 Joe Mancuso
 John Parrish
 Mark A. Dooley
 Edward ...
 Keeni Belden
 Dave Palmer
 Wayne Mosher
 Denise C. St. John
 Kim Dahlberg
 Dennis H. Baldry, I

William A. Coak &
~~Timothy Murphy~~
 Cindy Oswald
 Joan Church
 Daria Scandall
 Carol Ratto
 Douglas W. Edwards
 Dewart E. Neill
 J. Dondyl
 Ruf. Murtha
 Ronald E. Murray
 Thomas G. Gardner
 Janet A. Jones
 Lucy Hartman

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6/27

