

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
GEORGIA POWER COMPANY)	Docket Nos. 50-321 and 50-366
270 Peachtree Street)	Operating Licenses DPR-57
Atlanta, GA 30303)	and NPF-5
)	
Hatch Units 1 and 2)	EA-80-32

ORDER IMPOSING A CIVIL MONETARY PENALTY

I

Georgia Power Company, 270 Peachtree Street, Atlanta, Georgia, ("the licensee") is the holder of Facility Operating Licenses DPR-57 and NPF-5 ("the licenses") which authorize the company to operate Hatch Station, Units 1 and 2, in Appling County, Georgia, under certain specified conditions. Facility Operating Licenses DPR-57 and NPF-5 were issued by the Nuclear Regulatory Commission (the "Commission") on August 6, 1974 and June 13, 1978, respectively.

II

On March 19, 1980, an excessive radiation exposure rate in a vehicle transporting radioactive waste from Plant Hatch to Barnwell, South Carolina, was identified by an NRC inspector at the waste disposal site in Barnwell, South Carolina. Based on a special inspection conducted at the Hatch site near Baxley, Georgia, on April 29 and 30, 1980, it appeared that the licensee had not conducted its activities in full compliance with requirements of the NRC's "Packaging of Radioactive Material for Transport....", Part 71, Title 10, Code of Federal Regulations. A written Notice of Violation was served upon the

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licensee by letter dated June 19, 1980, specifying the item of noncompliance in accordance with 10 CFR 2.201. A Notice of Proposed Imposition of a Civil Penalty dated June 19, 1980, was served concurrently upon the licensee in accordance with Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282) and 10 CFR 2.205, incorporating by reference the Notice of Violation which stated the nature of the item of noncompliance and the provisions of NRC requirements with which the licensee was in noncompliance.

A response dated July 14, 1980 to the Notice of Violation and Notice of Proposed Imposition of a Civil Penalty was received from the licensee.

III

Upon consideration of the answer received and the statements of fact, explanation, and argument in denial or mitigation contained therein, as set forth in Appendix A to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the item of noncompliance designated in the Notice of Violation should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282) and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The licensee pay a civil penalty in the amount of Four Thousand Dollars (\$4,000) within twenty-five (25) days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may, within twenty-five (25) days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Secretary to the Commission, U.S.N.R.C., Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S.N.R.C., Washington, D.C. 20555. If a hearing is requested, the Commission will issue an order designating the time and place of hearing. Upon failure of the licensee to request a hearing within twenty-five days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

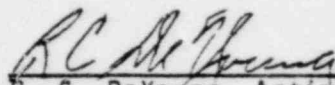
VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the licensee was in noncompliance with the Commission's requirements as set forth in the Notice of Violation; and

(b) whether, on the basis of such noncompliance, the Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



R. C. DeYoung, Acting Director
Office of Inspection and Enforcement

Dated at Bethesda, Maryland
this 24th day of September, 1980

Attachment:
Appendix A, Evaluation
and Conclusion

APPENDIX A

EVALUATION AND CONCLUSION

For the item of noncompliance and associated civil penalty identified in the Notice of Violation (dated June 19, 1980), the original item of noncompliance is restated and the Office of Inspection and Enforcement's evaluation and conclusion regarding the licensee's response to the item (dated July 14, 1980) is presented.

STATEMENT OF NONCOMPLIANCE

10 CFR 71.5 prohibits delivery of licensed material to a carrier for transport unless the licensee complies with the applicable regulations of the Department of Transportation in 49 CFR Parts 170-189. 49 CFR 173.393(j)(4) limits the radiation level to two millirem per hour in any normally occupied position of the car or vehicle.

Contrary to the above, on March 18, 1980, packages of licensed material were shipped from your facility in a transport vehicle (trailer #544104) with radiation levels in the normally occupied portions of the truck cab in excess of the regulatory limit as was evidenced by measured levels ranging from 2.6 to 3.7 mrem/hr upon its arrival at the Barnwell, South Carolina waste disposal site on March 19, 1980.

This is a Severity Level II Violation. (Civil Penalty - \$4,000).

EVALUATION OF LICENSEE RESPONSE

The licensee has disclaimed the alleged severity of noncompliance and has requested remission or mitigation of the civil penalty.

The licensee contends initially that its own survey of the truck cab did not indicate a level of radiation in excess of the two millirem per hour limit imposed by 49 CFR 173.393(j)(4). Rather, the licensee states that its "documentation of the survey indicates the highest radiation level measured in normally occupied positions was 1.5 mrem/hr." The NRC staff does not dispute the accuracy of the reading recorded by the licensee; rather, the violation is based on the licensee's failure to survey all the normally occupied positions of the vehicle. The licensee's survey consisted only of measurements of the middle of the driver's seat. The NRC inspector took measurements in the driver's seat area where the driver's head and shoulders would normally be positioned. This survey detected radiation levels of 2.6 to 3.7 millirems per hour in those areas, thereby revealing a clear violation of the two millirem per hour limit. Furthermore, surveys of the normally occupied positions of the cab taken by representatives of the State of South Carolina and by Chem-Nuclear, the operator of the waste disposal site, substantiated the NRC findings.

The licensee also contends that those levels recorded by the NRC constitute only a "small" departure from the acceptable limits and that the deviations did not result in excessive radiation exposure to the driver. Despite this contention, the two millirem per hour limit imposed by the regulations was in fact exceeded. The degree of radiation level was, however, less than a factor of two above the DOT requirements. As such, the violation constitutes a Severity Level II Violation as defined by the NRC's Criteria for Determining Enforcement Action and Categories of Noncompliance. See 44 Federal Register 77135 (12/31/79).

The licensee also contends that the proposed penalty is excessive when compared with penalties imposed on other licensees for similar violations. In determining whether to impose a penalty, as well as the amount, the Commission must take into account a number of factors unique to each case. In this and other similar cases the civil penalty dollar values were determined in accordance with the policy defined by the NRC's Criteria for Determining Enforcement Action and Categories of Noncompliance.

The licensee also contends that it engaged in no negligent or willful misconduct. However, the regulation is violated when the established limits are exceeded.

Finally, the licensee asks that the civil penalty be mitigated in light of the fact that it has already taken corrective steps to ensure that similar violations will not be repeated. The NRC will review these procedures at a subsequent inspection. Corrective action is required whenever a violation occurs and, therefore, is not generally a basis for mitigation.

CONCLUSION

Based on the discussion above, the NRC finds no basis for remission of the civil penalty or mitigation of the severity level of the violation. Therefore, the request is denied and the civil penalty will be imposed in the amount of \$4,000.