

Nuclear

GPU Nuclear Corporation
One Upper Pond Road
Parsippany, New Jersey 07054
201-316-7000

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Writer's Direct Dial Number:
(201) 316-7484

U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555

Gentlemen:

Subject: Three Mile Island Nuclear Station, Unit 1 (TMI-1)
DPR-50/50-289
Three Mile Island Nuclear Station, Unit 2 (TMI-2)
DPR-73/70-320
Oyster Creek Nuclear Generating Station (OC)
DPR-16/50-219
Fitness-For-Duty Program
10 CFR 26.6 Exemption Request From
10 CFR 26.24(g) Requirements of Section
2.7(O)(3) of Appendix A to Part 26

By this letter, GPU Nuclear Corporation (GPUN) requests (1) a determination that 10 CFR Part 26 Appendix A Section 2.7(O)(3)(ii) does not require that alcohol breath analysis equipment conform to both National Highway Traffic Safety Administration (NHTSA) standards and State statutes (i.e., conforming with NHTSA is sufficient whether or not a State has standards), or, in the alternative, (2) an exemption from the applicability of State statutes as referred to in Section 2.7(O)(3)(ii) of Appendix A to 10 CFR Part 26.

10 CFR Part 26, Appendix A, Section 2.7(O)(3)(ii) states:

"Alcohol breath analysis equipment shall be an evidential-grade breath alcohol analysis device of a brand and model that conforms to National Highway Traffic Safety Administration (NHTSA) standards (49 FR 48855) and to any applicable State statutes." (Emphasis added.)

GPUN desires to use the following alcohol breath analysis instruments which are on the NHTSA's "Conforming Products List of Evidential Breath Measurement Devices:"

- (1) Intoximeter 3000 manufactured by Intoximeters, Inc.
- (2) Alco Sensor III manufactured by Intoximeters, Inc.

These NHTSA approved devices provide sufficient sensitivity, reliability, and operability to satisfy the regulatory requirements of 10 CFR Part 26 for analyses of breath alcohol content. Additionally, the excellent operational characteristics and ease of use of both Intoximeters, Inc. devices support the high volume of testing required by the 10 CFR Part 26.

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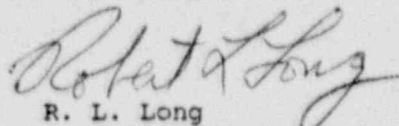
GPUN facilities subject to 10 CFR Part 26 are located in both Pennsylvania and New Jersey. The Intoximeters, Inc. devices GPUN intends to use are currently approved by the Commonwealth of Pennsylvania's Department of Health as "Equipment to Determine Blood Alcohol Content under the Vehicle Code and..." (Pa B. Doc 89-827) for evidentiary purposes. However, State of New Jersey statutes, which do provide for the State Attorney General to approve a device or instrument to be used in the chemical analysis of the breath of a person arrested pursuant to the State traffic regulations concerning operation of motor vehicles and power vessels, do not list the Intoximeters, Inc. devices in the New Jersey Administrative Code 13:51-3.5: "Approved instruments for performing chemical analysis of a person's breath". The State of New Jersey does not have statutes for use of breath alcohol devices in employee/employer matters. Thus, the devices proposed by GPUN are either not covered by "any applicable State statutes," and/or are not currently approved in the State of New Jersey for violations of traffic and navigation laws. The manufacturer has indicated that the State of New Jersey has evaluated the Intoximeter 3000; but, the State has not yet signed the approval form.

GPUN requests this determination or exemption since the use of State approved devices in New Jersey is not necessary to achieve the underlying purpose of the rule, *i.e.*, that of providing a " . . . credible test result" (NUREG-1385 Paragraph 4.18). The testing instruments proposed by GPUN for use in breath alcohol analyses are approved and listed by the DOT's NHTSA as evidential grade devices (23 U.S.C. 402, FR Doc 89-15534), and thus would provide credible test results when used to confirm blood alcohol concentration (BAC) levels. At the same time, the interest of the individual is protected by use of these federally approved devices, and there is no elimination of the option for the individual to request a blood specimen. Also, it would allow GPUN to avoid the need to use different equipment in the two different states.

GPUN further requests this determination or exemption since compliance with New Jersey State statutes would result in increased costs of waste disposal, which does not appear to have been recognized or considered when the federal regulations were being formulated. The use of New Jersey State approved devices, such as the Breathalyzer Model 900 manufactured by National Dreger, Inc., requires the disposal of varying quantities (over plant life) of sulfuric acid, a hazardous waste. Therefore, approval of this exemption request would eliminate the costs associated with such waste disposal and would be in the public interest by minimizing adverse impacts on the environment resulting from waste disposal of this hazardous substance.

GPUN believes the intent of 10 CFR Part 26 is such that the NRC expects utilities to use modern, reliable, and accurate breath analysis equipment. The NHTSA approved instruments manufactured by Intoximeters, Inc. clearly meet this intent. Therefore, GPUN requests your expedited review and the providing of a determination or approval of this exemption request.

Very truly yours,



R. L. Long

Vice President-Corporate Services

K20FEB90

cc: W. T. Russell - Administrator Region I NRC
J. Stolz - Director, Project Directorate I-4 NRC
A. Dromerick - OC NRC Project Manager
R. Hernan - TMI-1 NRC Project Manager
M. Masnik - TMI-2 NRC Project Manager
F. Young - NRC Sr. Resident Inspector TMI 1&2
E. Collins - NRC Sr. Resident Inspector OC