

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
GPU Nuclear Corporation)	Docket No. 50-219
Oyster Creek Nuclear Generating)	License No. DPR-16
Station)	
Forked River, New Jersey)	EA 93-136

ORDER IMPOSING A CIVIL MONETARY PENALTY

I

GPU Nuclear Corporation (Licensee) is the holder of Operating License No. DPR-16 (License), issued by the U. S. Nuclear Regulatory Commission (NRC or Commission). The License authorizes the Licensee to operate the Oyster Creek Nuclear Generating Station, in accordance with the conditions specified therein.

II

An inspection of licensed activities was conducted on May 17 and 18, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 17, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice on September 20, 1993. In its response, the Licensee admitted the violations, and paid \$50,000 of the \$75,000 proposed. However, the licensee requested withdrawal of the remaining portion of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated, and that the portion of the civil penalty not paid by the licensee should be imposed for the violations designated in the Notice.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 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 \$25,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S.

Nuclear Regulatory Commission, ATTN: Document Control
Desk, Washington, D.C. 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555.

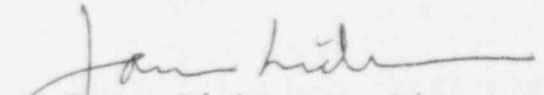
Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on

the basis of the violations admitted by the Licensee, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 9th day of November 1993

APPENDIX

EVALUATION AND CONCLUSION

On August 17, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$75,000 was issued to the licensee for five violations identified during an NRC inspection. GPU Nuclear Corporation (Licensee) responded to the Notice on September 20, 1993. The Licensee admitted the violations, paid \$50,000 of the civil penalty, but requested withdrawal of the remaining \$25,000 of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

1. Restatement of Violations

- A. Plant Technical Specification (TS) 6.11 requires, in part, that procedures for personnel radiation protection be prepared consistent with the requirements of 10 CFR Part 20 and shall be approved, maintained and adhered to for all operations involving personnel radiation exposure.

Licensee radiation safety procedure 9300-ADM-4110.04, Rev. 8, "Radiation Work Permit (RWP)," paragraph 7.2.3, Block 3, Work Description, written to comply with TS 6.11 and 10 CFR Part 20, requires that sufficient detail be provided in the RWPs for Radiological Controls personnel to understand the scope of the task.

Contrary to the above, RWP 930254, prepared for decontamination work scheduled for May 7, 1993, in the New Radwaste Building fill aisle, did not provide sufficient detail for Radiological Controls personnel to understand the scope of the task. Specifically, the RWP did not indicate that personnel would enter into the batch tank pit on the 23' elevation of the New Radwaste Building. Consequently, on May 7, 1993, workers entered the batch tank pit, while neither the Radiation Controls Technician providing job coverage to the workers, nor the Radiological Engineering Department, which establishes as low as reasonably achievable (ALARA) controls and support, knew that this entry was to be made under this RWP.

- B. 10 CFR 20.201(b) requires that each licensee make such surveys as (1) may be necessary to comply with the requirements of Part 20 and which (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of

conditions. 10 CFR 19.12 requires, in part, that all individuals working in any portion of a restricted area be kept informed of radiation in such portions of the restricted area, and be instructed in the precautions and procedures to minimize exposure to radiation. The extent of these instructions shall be commensurate with potential radiological health protection problems in the restricted area.

Contrary to the above, prior to the May 7, 1993 entry by personnel into the batch tank pit on the 23' elevation of the New Radwaste Building, a portion of the licensee's restricted area that was posted as a locked high radiation area and which required respirator usage, the licensee did not (1) survey the batch pit to assure compliance with that portion of 10 CFR 20.101 that limits total occupational dose and (2) inform individuals working in the area of radiation levels in the area and had not instructed those individuals in the precautions and procedures to minimize exposure to radiation. The floor of the batch pit had been covered with spilled powder resin from the batch tank and had contact dose rates of about 10 R/hr.

- C. 10 CFR 20.103(c)(2) requires, in part, that the licensee maintain and implement a respiratory protection program that includes, as a minimum, air sampling sufficient to identify the hazard and permit proper equipment selection.

Licensee radiation safety procedure 9300-4020.03, Revision 8, "Use of Respiratory Protection Equipment," paragraph 7.9.2 requires that the protection factor (PF) for respiratory protection equipment selected be greater than the multiple by which the peak concentration of airborne radioactive materials is expected to exceed the values of Appendix B, Table I, Column I of 10 CFR Part 20 as determined by the sampling of the airborne contamination.

Contrary to the above, on May 11, 1993, the licensee did not maintain and implement a respiratory protection program in that (1) radiation workers were permitted entry into the batch tank pit on the 23' elevation of the New Radwaste Building to remove debris, without prior air sampling being conducted in the pit to identify the hazard and (2) the respiratory protection equipment (negative pressure full face respirators) worn by the workers provided a PF of 50, which was less than the required PF indicated by the air sampling conducted during the pit entry.

- D. 10 CFR 20.103(a)(3), requires, in part, that for purposes of determining compliance with the requirements of 10 CFR 20.103, the licensee shall use suitable measurements of concentrations of radioactive material in air for detecting and evaluating airborne radioactivity in restricted areas.

Contrary to the above, on May 11, 1993, two radiation workers entered the batch tank pit on the 23' elevation of the New Radwaste Building, a posted restricted area requiring respiratory protection equipment for entry, and the licensee did not use suitable measurements of concentrations of radioactive material in air for detecting and evaluating airborne radioactivity. Specifically, only one person had been issued a breathing zone analyzer (BZA), despite the fact that only one person could enter the batch tank pit at a time. This resulted in a situation where the worker without the BZA could be working in higher concentrations of airborne radioactivity.

- E. Plant Technical Specification 6.11 requires that procedures for personnel radiation protection be prepared consistent with the requirements of 10 CFR Part 20 and shall be approved, maintained, and adhered to for all operations involving personnel radiation exposure.

Licensee radiation safety procedure 9300-ADM-4010.02, Revision 5, "ALARA Review Procedure," Section 7.3, "ALARA Review Criteria", in part, implements the requirements of 10 CFR Part 20 by specifying the circumstances in which an ALARA review must be done.

Contrary to the above, as of May 18, 1993, procedure 9300-ADM-4010.02 did not adequately specify criteria for performing an ALARA review for highly contaminated systems and components in that such reviews were left to the discretion of Radiological Engineering without guidelines for exercising that discretion. As a consequence, Radiological Engineering waived the performance of an ALARA review for a planned decontamination task involving highly contaminated material in a locked high radiation exclusion area - a situation for which an ALARA review would normally have been warranted by sound radiological protection principles.

These violations are categorized in the aggregate as a Severity Level III problem (Supplement IV).

Civil Penalty - \$75,000.

2. Summary of Licensee Request for Mitigation

The licensee, in its response, admitted the violations, and paid \$50,000 of the proposed civil penalty. However, the licensee, requested withdrawal of the \$25,000 escalation of the civil penalty. (The NRC had escalated the base civil penalty of \$50,000 by 25% based on the long term corrective actions not being adequate or timely, and another 25% based on the licensee's prior performance). As a basis for its request, the licensee stated that prior to the enforcement conference, the Vice President/Director of the Station directed that future decontamination activities, similar to the May 7 and 11 tasks, be performed under the licensee's work management planning process. The licensee also indicated that Radiological Controls management had issued directives to define the expected interpretations of the As-Low-As-Reasonably-Achievable (ALARA) review criteria. These directives were included in the procedures shortly after the enforcement conference. Therefore, the licensee requests that the 25% escalation based on the corrective action factor be withdrawn.

With respect to the licensee's prior performance, the licensee contends that the May 1993 event and the April 1991 event, the latter being the subject of a past escalated enforcement action (Reference: EA No. 91-056), do not have similar root causes. Therefore, the licensee maintains that the two events are not indicative of the same failure, and corrective actions for the April 1991 event cannot be expected to have prevented the May 7th event. On this basis, the licensee contends that the 25% escalation of the base civil penalty on prior performance is inappropriate.

3. NRC Evaluation of Licensee Response

The NRC has evaluated the licensee response and has determined that the licensee has not provided an adequate basis for withdrawal of the \$25,000 portion of the civil penalty attributed to the 50% escalation of the base amount.

With respect to the 25% escalation of the penalty based on corrective actions, the licensee's presentation at the June 24, 1993 enforcement conference, more than six weeks after the event, indicated that the licensee had not completed its determination on a need for clarifying the ALARA review procedure or on the need for instituting long-term corrective actions that focused on ALARA review and job planning. Weaknesses in the ALARA procedure were a major contributing factor in the root cause of the violations,

because had the procedure specified clear criteria for performing an ALARA review in this case, such a review would have provided the necessary elements of radiological planning to prevent the violations from occurring.

The NRC recognizes that the licensee's May 24, 1993, "ALARA Reviews and RWP Requirements" memorandum instructed the licensee's staff to perform reviews for a broad category of work. However, at the enforcement conference, the licensee indicated that they had not determined if these changes would be made permanent by incorporating them in the ALARA procedure. While the licensee's May 24, 1993 memorandum constituted an adequate interim corrective action, it needed to be incorporated into the radiation protection procedures to qualify as a long-term corrective action, because Technical Specification 6.11 requires that all operations involving personnel radiation exposure shall be conducted following personnel radiation protection procedures. In this case, the necessary procedure changes, including the temporary change to the ALARA review procedure, were not made until the NRC emphasized the need for permanent procedural guidance at the enforcement conference. Therefore, the NRC maintains that the licensee's long-term corrective actions were not adequate or timely and the 25% civil penalty escalation based on corrective actions was appropriate.

With respect to the 25% escalation of the penalty based on past performance, the NRC maintains that the 1991 and May 1993 events were similar in that they both indicated weaknesses in job planning and communication, and failure of personnel to ensure that radiological requirements regarding appropriate survey, instructions and monitoring were followed. For example, in 1991, one operator entered a locked high radiation area of unknown radiation intensity without appropriate survey, monitoring equipment, and instructions in precautions and procedures to minimize exposure to radiation, as required by the plant technical specifications and the regulations. In May 1993, workers entered a highly contaminated locked high radiation area of unknown radiation hazard without appropriate survey and instructions, and on one occasion, one worker entered the same area without suitable monitoring equipment for airborne radioactivity, as required by the regulations.

In addition, the 1991 event indicated a need for the licensee to enhance its procedure regarding personnel monitoring during group entry, in particular, the practice of allocating certain monitors to only one person when more than one person was entering the area. During the May 11, 1993 event, the same "group entry" criterion was applied and

resulted in not having suitable measurements of radioactive dose for one of the two workers, since they were separately entering the highly contaminated area.

When considering whether to escalate the penalty based on the licensee performance factor, a number of criteria are considered, as stated in Section VI.B.2 of the Enforcement Policy. In addition to the effectiveness of previous corrective actions for similar problems, those criteria consist of Systematic Assessment of Licensee Performance (SALP) evaluations, prior enforcement history overall as well as in the area of concern. The base civil penalty may also be escalated by as much as 100% if the current violation reflects the licensee's poor prior performance. Even if the NRC were to accept the licensee's argument that the events were not similar, a basis for partial escalation based on past performance still exists, given the licensee's prior enforcement history in the area of radiological controls, since it included the escalated enforcement action in 1991 along with several cited and non-cited violations since then. In light of the prior events, the NRC could have considered an even higher escalation, rather than the 25% applied, but chose not to because of the licensee's improving SALP rating in this area. Therefore, based on the above, the NRC maintains that 25% escalation on the factor is appropriate.

4. NRC Conclusion

The NRC concludes that the licensee has not provided an adequate basis for mitigating the escalation of the civil penalty based on the corrective action and prior performance adjustment factors. Accordingly, the NRC has determined that a monetary civil penalty in the amount of \$25,000 should be imposed.

GPU Nuclear Corporation

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