

**Nebraska Public Power District**GENERAL OFFICE
P.O. BOX 499, COLUMBUS, NEBRASKA 68601-0499
TELEPHONE (402) 564-1361

October 7, 1982

Mr. Richard C. DeYoung
Director
Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. DeYoung:

Pursuant to your letter of August 9, 1982, which forwarded a Notice of Violation and Proposed Imposition of Civil Penalty, as well as an Order Modifying License Effective Immediately, NPPD was directed to respond on or before September 8, 1982. On August 19, 1982, NPPD requested an additional 30 days within which to respond to these actions. On August 24, 1982, you granted NPPD's request and the responses are now due on or before October 8, 1982. The instant letter and attachments serve as NPPD's response.

NPPD's assessment of the case leads it to acknowledge that an inaccurate statement was made. NPPD also acknowledges that certain matters could have been more properly handled. However, NPPD's assessment also leads it to conclude that the magnitude of the proposed enforcement action is not warranted. The facts reveal that this is not a material false statement case riddled with instances of corporate management inattention.¹ Rather, at the root of the instant enforcement action is NPPD's interpretation of one aspect of the NRC's emergency plan regulation, i.e.,

¹ The facts reveal that aside from the matter in issue, viz., the installation and operability of the mobile sirens, NPPD satisfactorily complied with the NRC's public notification requirement of the NRC's emergency plan regulation. NPPD's compliance was achieved by July 31, 1981, making NPPD one of only 12 utilities to so comply by that date. See NRC Staff report to the Commission, August 27, 1981. Clearly, such prompt compliance is an indication of a concerned corporate management.

the public notification requirement. In 1980 NPPD, in a series of internal meetings involving corporate management, determined that the public notification requirement of the emergency plan regulations could be satisfied through a combination of fixed and mobile sirens. With respect to the mobile sirens, the matter at issue, NPPD determined that the regulation was satisfied once it had ordered, obtained and distributed such sirens to the affected local volunteer fire departments.² NPPD's determination was reinforced by subsequent discussions with NRC, which culminated in the NRC Staff advising the Commission on August 27, 1981 that NPPD was in compliance with the NRC's public notification requirement. In NPPD's view the adequacy of the system, including installation and training, were matters within the purview of FEMA. NPPD anticipated that a FEMA drill would be conducted and directed its efforts to assure that such drill would be successful. However, if it were not, time would be provided to correct any deficiency. It now appears that NPPD's interpretation of the public notification requirement of the NRC's emergency plan regulation is at odds with your Staff's. While NPPD now understands this divergence, it does not think such should result in the proposed enforcement action. We ask you to give these factors significant consideration in your deliberations as to whether the magnitude of the proposed enforcement action is warranted.³

During the Commission meeting of May 28, 1982 concerning this enforcement action, it was stated that: "The company lied to us". Tr. 49. The facts

² NPPD wishes to stress that it did not simply drop the sirens off to an unsuspecting fire chief. Rather, personal contacts had been made well prior to delivery to assess capability of local volunteer fire departments and to discuss mobile sirens, their purpose and use.

³ NPPD, pursuant to its Freedom of Information Act request, is in receipt of the Commission transcript of discussion of the enforcement action, May 28, 1982. Therein it is stated that during the exit interview the NRC felt that NPPD's "attitude was anything but cooperative" and that NPPD did not take emergency planning seriously. Tr. 11-12. While NPPD notes that this is a subjective judgment, NPPD submits that an explanation is in order. As stated above, and as set forth in the enclosed attachments, underlying NPPD's action was its view that, with regard to the mobile sirens, it had complied with the NRC regulations by distribution of the mobile sirens and that any additional work in this area was a matter for FEMA. If NPPD's attitude was viewed at the time as being negative, NPPD asks that the above serves as a mitigating factor. NPPD stresses that it does take seriously its commitment to NRC regulations in general and emergency planning in particular. This fact is evidenced by NPPD's previously untarnished enforcement record and the corrective action that has been, and will be, taken.

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presented in the attached responses do not support this characterization. To lie presumes a known fact is withheld or deliberately falsified. The facts presented clearly show that this was not the case. Indeed, the NRC in its investigation report of the incident specifically concluded that NPPD management had not deliberately transmitted false information.

As we have stated in our conversations with you and your Staff, NPPD is hopeful that this matter can be resolved to the mutual satisfaction of the parties. NPPD is of the view that a properly scoped management appraisal would be of value and we therefore have determined to have such conducted regardless of the outstanding Order. However, if the scope of such appraisal is not mutually agreed upon, NPPD wishes to preserve its right to challenge both the necessity and immediacy of such Order. With respect to the amount of the civil penalty, NPPD's reading of the Enforcement Policy leads it to conclude that there are a number of ways to assess the matter. NPPD trusts that the reasons advanced in the attached documents will result in a significant reduction. NPPD looks forward to discussing this matter with you.

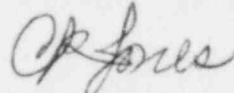
You will note that NPPD's attached responses set forth positions contrary to yours; nevertheless, NPPD feels its positions are responsible. NPPD wishes to stress that its responses should not be viewed as an entrenchment, thereby precluding resolution; rather, NPPD has attempted to preserve what it considers to be responsible positions.

I want to assure you that you have the Board of Directors' and management's attention; appropriate corrective actions have been taken and further ones are proposed. In light of NPPD's prior enforcement history, and its outstanding operating record NPPD asks that the proposed action be mitigated and the matter be brought to a close.

As a last matter, your cover letter of August 9, 1982 directs NPPD to meet with you to explain various matters associated with this enforcement action. NPPD is prepared to meet with you to discuss this matter and awaits hearing from you as to a time, place and date, as well as participants, after you have had an opportunity to read the attached responses.

Sincerely,

NEBRASKA PUBLIC POWER DISTRICT



Cecil R. Jones
Assistant General Manager

/jt

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Attachments:

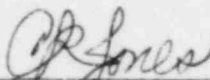
Response to Order Modifying
License Effective Immediately

Written Statement or Explanation
Regarding Notice of Violation

Written Answer Regarding Proposed
Imposition of Civil Penalty

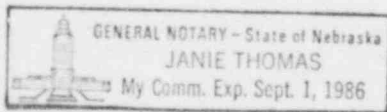
cc: John Collins w/attachments
Administrator
NRC Region IV

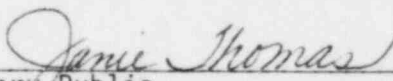
I hereby swear that the above-stated information and the referenced
attachments are true and correct to the best of my knowledge and belief.



Cecil R. Jones

Subscribed and sworn to before me this 7th day of October,
1982.





Notary Public

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 50-298
Nebraska Public Power District)	License No. DPR-46
Cooper Nuclear Station)	EA 82-46

RESPONSE TO ORDER MODIFYING
LICENSE EFFECTIVE IMMEDIATELY

On August 9, 1982, the Nuclear Regulatory Commission ("NRC" or "Commission") issued an immediately effective Order modifying the license of Nebraska Public Power District ("NPPD") to require that within 30 days NPPD submit to the Region IV Administrator for review and approval a "comprehensive plan of action that will include an independent appraisal of site and corporate management organization and functions, and recommendations for improvements in communications, management controls, and oversight." Further, the Order stated that within 30 days of issuance NPPD may request a hearing. Subsequently, by Order of August 24, 1982, the NRC extended until October 8, 1982 the time for NPPD to file a response and request a hearing.

In response, NPPD submits a proposed scope of management appraisal and schedule which it has determined to pursue independent of the instant Order. NPPD views

such appraisal and schedule to be responsive to the Order. See Attachment 1. In the event the scope of the appraisal is not mutually agreed to or a controversy arises with respect to the action to be taken in response to recommendations resulting from the management appraisal, NPPD reserves the right to challenge both the necessity and immediacy of the Order and to request a hearing.¹

Attachment: Nebraska Public Power District
Proposed Management Appraisal
of Corporate Management

¹ If this is the only time at which NPPD can request a hearing it does so until such time as the scope of appraisal is mutually agreed to and until the action to be taken in response to recommendations resulting from the management appraisal is satisfactorily resolved. However, at this time NPPD does not ask that the Commission issue an Order designating the time and place of any such hearing. Such should be held in abeyance. Alternatively, the time within which to request a hearing could be extended until completion of the above referenced events. NPPD would note that if there is a hearing, an opportunity to challenge the matters set forth in Section II of the Order should be provided.

NEBRASKA PUBLIC POWER DISTRICT
PROPOSED MANAGEMENT APPRAISAL
OF CORPORATE MANAGEMENT

SUBMITTED TO NRC ON OCTOBER 8, 1982

Proposed Scope:

Conduct an appraisal of the Nebraska Public Power District's Columbus General Office Corporate Management organization that is responsible and involved in the overall management and control of Cooper Nuclear Station. The appraisal will evaluate current organizational responsibilities, management controls, staffing levels and competence.

Areas to be examined:

1. Organization Structure
 - ° Review the General Office Corporate organization of the nuclear related areas to establish that functions, assignments, and responsibilities of individuals are clearly defined and understood.
 - ° Review the lines of accountability, authority and communications of the nuclear related elements of the organization to assure the effective conduct of functions and assignments.
 - ° All General Office Corporate aspects of the nuclear organization should be covered with particular emphasis on safety and reliability.
2. Management Involvement and Commitment
 - ° Determine whether Corporate managers assigned functional responsibilities for nuclear matters have

direct involvement in significant decisions that could affect their responsibilities.

- ° Examine the management commitment to the operation of the nuclear station in a safe and proper manner by reviewing the personal involvement, interests, awareness, and knowledge.

3. Technical Support

- ° Review whether there is sufficient and competent Corporate engineering/technical staff to carry out the engineering and/or engineering supervision review functions necessary to ensure safe and reliable nuclear plant operation.

4. Licensing and Regulation Requirements

- ° Review that the Corporate nuclear licensing staff is sufficient to carry out the functions necessary to support the maintenance of the nuclear station operating license and any additional required regulatory licenses or permits.

5. Quality Assurance

- ° Review that the functions, assignments, and responsibilities of the quality assurance group are clearly defined and that there is a division of responsibility between the Corporate quality assurance group and other Corporate groups in the nuclear utility operating organization.
- ° Examine whether matters having nuclear safety significance are being reviewed, audited, and analyzed by this independent quality assurance group.

NEBRASKA PUBLIC POWER DISTRICT
PROPOSED MANAGEMENT APPRAISAL PLAN
TIME SCHEDULE

<u>Time Line</u>	<u>Activity</u>
October 8, 1982	Outline of Proposed Management Appraisal is submitted to the NRC Region IV Administrator for review and approval.
Start	Region IV Administrator approves the Proposed Management Appraisal concept.
20 days later	NPPD will submit request for proposals to several firms who appear qualified to accomplish the management appraisal outlined.
30 days later	Request for proposals will be returned to NPPD and evaluation will start.
10 days later	NPPD will have completed its evaluation of proposals.
1 day later	NPPD will submit to the Region IV Administrator the names of two or three firms to determine that they meet the requirement "to be independent." The two or three firms will each have satisfied the request for proposal. (From these three, management will propose one firm to the Board of Directors for award of the contract to do the defined appraisal.)

<u>Time Line</u>	<u>Activity</u>
Few days later	Receive approval from the Region IV Administrator that the firms are determined to be "independent."
Few days later	NPPD will make recommendation to its Board of Directors to engage a firm to do the outlined management appraisal.
December, 1982 or January, 1983 Board Meeting	Expect the Board to award the contract to a firm on the date of its next regularly scheduled Board meeting. (The December, 1982 Board meeting is scheduled December 16-17 due to the holidays. It is very unlikely that the time schedule will be completed to accomplish award at the December Board meeting. The award will most probably occur at the meeting tentatively scheduled January 27-28, 1983.)
10 days later	After Board award of contract, would expect the firm to commence the actual appraisal.
60-90 days later	Would expect the firm to have completed the appraisal and submitted copies to NPPD management and Board.
Promptly thereafter	A copy of the appraisal will be submitted to the Region IV Administrator.

Time Line

Activity

30 days later

NPPD will provide to the Region IV Administrator its analysis of each recommendation and its plan of action resulting from the findings and recommendations in the appraisal.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 50-298
Nebraska Public Power District)	License No. DPR-46
Cooper Nuclear Station)	EA 82-46

WRITTEN STATEMENT OR EXPLANATION
REGARDING NOTICE OF VIOLATION

I. INTRODUCTION

On 9 August, 1982, the Nuclear Regulatory Commission ("NRC" or "Commission") issued a Notice of Violation and Proposed Imposition of Civil Penalty ("Notice") to Nebraska Public Power District ("NPPD") regarding alleged violations of NRC requirements "related to the timely installation and testing of the prompt public notification system required by 10 CFR 50.54(s)(2)(i) and Section IV.D.3 of Appendix E to 10 CFR Part 50." The Notice stated that as a result of actions arising out of such alleged violations the NRC Staff proposes "civil penalties of \$96,000...for each of three [alleged] material false statements made related to NRC requirements and civil penalties of \$12,000...for the [alleged] failure between March 1 and March 12, 1982 to install and initially test a prompt notification system."

Further, the Notice states that within 30 days NPPD is required to submit under oath a written statement or explanation to the Director of the Office of Inspection and Enforcement, "including for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted; (3) the corrective steps which have been taken and the results achieved; (4) the corrective steps which will be taken to avoid further violations; and (5) the date when full compliance will be achieved." Subsequently, by letter of August 24, 1982, the NRC extended until October 8, 1982 the time for NPPD to file a written statement or explanation regarding this Notice.

In responding to this Notice, as is set forth more fully below, NPPD does not believe that the violations imposed by the NRC are appropriate or warranted from a factual, policy or legal perspective. NPPD acknowledges that statements were made that were subsequently determined to be inaccurate and that certain activities associated with its prompt notification response (i.e., the early warning system ("EWS")) could have been more properly handled. However, as to the specific allegations that material false statements were made, NPPD denies such allegations. Further, as to the allegation that NPPD was not in compliance with Commission regulations, NPPD, based upon its interpretation of the regulation in the 1980-81

time-frame and subsequent NRC actions, is of the view that it was not in violation of Commission regulations. NPPD understands now that the NRC's interpretation of the regulation is at odds with its view, and indeed NPPD, as will be discussed, has taken actions to bring itself into line with the NRC's interpretation. However, given the confusion that has surrounded the implementation of the emergency plan regulation, both as to the specific nature of the requirements, as well as the responsibilities and interactions of federal, state and local agencies,¹ it was not unreasonable for NPPD to interpret the regulation as it did.

II. Factual Background

On August 19, 1980 the NRC issued a revised emergency planning regulation which required, among other things, that by July 1, 1981 "each nuclear utility power reactor licensee shall demonstrate that administrative and

¹ An example of the confusion is seen in the recent Licensing Board Initial Decision in Consumers Power Company (Big Rock Point Plant), LBP-82-___, ___ NRC (September 14, 1982). Therein, the licensee believed erroneously, that it need not demonstrate the adequacy of portions of the emergency plan for which state and local governments have primary responsibility.

Further confusing the matter was the Memorandum of Understanding, 45 Fed. Reg. 82713 (1980) which stated that NRC had onsite responsibility while the Federal Emergency Management Agency ("FEMA") had off-site responsibility. Inasmuch as the EWS involved off-site activities, NPPD was of the view that, once it had provided the necessary alert mechanisms, the details of notification was under the jurisdiction of FEMA.

physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ." Subsequently, on December 30, 1981, the Commission extended the deadline for this demonstration until February 1, 1982.

To comply with this provision of the regulation by the initial July 1, 1981 deadline, NPPD corporate management, in 1980 (before the regulation was promulgated in final form), began an active program of examining possible emergency notification alternatives. Numerous corporate management meetings were held during which this issue was discussed. As a result, it became NPPD's view that to demonstrate that administrative and physical means had been established for alerting the public (i.e., compliance with the regulation), NPPD would employ an EWS that would show (1) that fixed sirens were in place in the more densely populated areas and tested and (2) that functionally capable mobile siren equipment was distributed to the local volunteer fire departments for use in the sparsely populated areas. To effecuate this program, the NPPD employee, subsequently identified by the NRC Staff as D-6, was selected by management and given instructions to

pursue this concept and to gather the necessary data.^{2 3} With respect to the mobile sirens, D-6 met and discussed with each of the subject volunteer fire departments the mobile siren concept. At first NPPD decided to use skid mounted units. However, it was subsequently determined that such would not be an effective system.

Thereafter, in early 1981 NPPD focused upon mobile sirens that could be mounted on volunteer firemen vehicles. At such time D-6 inquired as to the response capability of each fire department and the ability of each fire department to cover specific areas. Based upon the information obtained from the fire departments, D-6, together with D-3, studied the subject area to determine the number of mobile units that would be necessary to

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- ² D-6's involvement in NPPD's compliance with the public notification requirement is set forth in his attached affidavit. NPPD notes that contrary to the impression created by D-6's statement to the NRC Staff that he had not read the entire emergency planning regulation, he was indeed familiar with the pertinent public notification requirements of the regulation and attended a seminar which discussed this very matter. See attached Affidavit of D-6.
- ³ D-6 made initial contact with affected off-site personnel, including local fire department personnel, in 1980. The lapse between that time and the March 1982 date wherein volunteer fire chiefs made statements to NRC may account for some of the inconsistency between their statements and the attached Affidavit of D-6. NPPD also notes that there were two new volunteer fire chiefs during the subject time-frame.

alert the public within the relevant time-frames. Thereafter, NPPD ordered 32 mobile units, 25 for specific routes, and 7 spares. See attached Affidavit of D-6.

By letter of January 2, 1981, NPPD provided the NRC Staff with a description of the selected system which included the skid mounted mobile units.⁴ In the January 2 letter, NPPD specifically requested, and by a January 27, 1981 telephone conversation with NRC Staff subsequently received, concurrence with its EWS approach. A framework for implementation of this approach was provided in the state and local Emergency Response Plans submitted concurrently with the January 2, 1981 letter. It was subsequently decided and reported to the NRC Staff that the system should be modified to consist of 9 fixed sirens, 32 mobile sirens used by volunteer firemen and 6 sheriff cruisers.

By Internal Memorandum of June 23, 1981, NPPD made clear its interpretation of actions necessary to comply with these regulations. There it was stated that:

By July 1, 1981 the siren system should be operable. The District should write a letter before this date including: 1) a statement that the 9 fixed sirens are installed, tested and operable and who will actuate them; 2) the status of delivery of the 30+ mobile sirens and who will control them; and 3) how

⁴ In accordance with NPPD practice, compliance with the July 1, 1981 deadline was placed on the corporate action item tracking system. This system is designed to assure that commitments made by NPPD are monitored and completed in a timely manner.

state and county personnel will provide the alternate for the mobile sirens in the interim (i.e. Paul Revere system).

In short, NPPD viewed compliance with this provision of the regulations as being completed when the fixed siren system was installed and tested and functionally capable mobile siren equipment were delivered to the local fire departments. See also Statement of D-4, taken during the NRC investigation confirming this view.

Based on the recommendations set forth in the June 23, 1981 Memorandum, and consistent with the status of compliance activities reported in an Internal Memorandum of June 26, 1981 to D-4, NPPD notified the NRC, by letter of June 30, 1981, of its revised EWS and the status of its compliance with the July 1, 1981 deadline. In this letter NPPD stated that while it would be unable to meet the July 1, 1981 implementation deadline, activities in this area were continuing and should be completed by approximately July 31, 1981. NPPD specifically stated that

...and until all mobile equipment is distributed, the local Sheriff's Departments and Fire Departments will utilize existing mobile equipment as warning devices as defined in the various state and local plans submitted in Reference 4. Present plans also include use of the existing phone systems.

. . .

The siren system will be ready for testing approximately July 31, 1981 pending no further delays by the Peru authorities. All of the mobile equipment should also be received and distributed by this date.

This letter was also given wide distribution both to the NRC and off-site emergency planning agencies.

The mobile sirens were received by NPPD on or about June 19, 1981. Distribution of these sirens was thereafter accomplished by D-6. He personally delivered the sirens to each volunteer fire department. He instructed a member of each volunteer fire department on the procedures to be followed in order to assemble the units. Thereafter, D-6 prepared route maps which described the precise routes to be covered by the firemen. These maps were subsequently distributed to the fire departments. See attached Affidavit of D-6.

On August 13, 1981, the NRC Staff contacted NPPD to determine if NPPD had met the July 31, 1981 date pursuant to its June 30, 1981 commitment letter (i.e., with respect to the mobile sirens, that such had been delivered). NPPD responded that it had. Based upon this contact, and the NRC Staff's earlier acceptance of the EWS concept set forth in the January 2, 1981 letter (see p. 6, supra), NPPD assumed that there had been Staff acceptance of its actions. This assumption was underscored by the NRC Staff's action on August 27, 1981 when they informed the Commission that NPPD was one of only twelve utilities in compliance with the public notification requirement of the emergency plan regulation. Also, in September of 1981, NPPD management met with the Regional Administrator in

Arlington, Texas to discuss emergency planning. No indication was given by the NRC at that time that NPPD's EWS plan was deficient. While the focus was on on-site capabilities, inasmuch as the meeting was an emergency plan meeting, NPPD concluded yet again that its EWS was satisfactory.

In NPPD's view, the actions described in its June 30, 1981 submittal, coupled with its contacts with the volunteer fire departments and the directions furnished in the state and local emergency response plans in coordination with NPPD plans, demonstrated establishment of the administrative and physical means for prompt emergency notification. After these actions were completed, NPPD believed that its commitment to the NRC regarding the pertinent EWS regulation had been completed. See Statement of D-4. Accordingly, NPPD withdrew this item from its corporate action tracking system. Id. Even after NPPD had, in its view, taken appropriate action in compliance with the regulations, NPPD management directed that activities designed to enhance the EWS continue. NPPD pursued such a course because it assumed that the adequacy of the EWS would be evaluated by FEMA, after a FEMA conducted exercise had been completed. It was NPPD's desire to obtain a favorable FEMA report. To this end, in August, 1981, NPPD had an independent test conducted of mobile sirens to verify that they would provide the appropriate decibel

level. Route maps were thereafter prepared. In addition, NPPD management directed that D-6 continue to provide liaison with the local fire departments to assist them in implementation of their responsibilities. This individual coordinated extensively with local fire department personnel on a continual basis. During such coordination efforts he established a rapport with the involved officials. Based on such interactions, it was his belief that the local fire departments' personnel were pursuing activities to assure that the equipment provided was being properly placed in service and the fire departments' personnel were prepared to respond to an emergency should one occur. See attached Affidavit of D-6. In that the interim notification system previously referenced in the June 30, 1981 letter to the NRC was still in effect, NPPD was confident that during this period the public was adequately protected.

On approximately February 1, 1982, the NRC Staff contacted NPPD, along with all other licensees, to determine compliance with the regulations requiring a demonstration of the administrative and physical means to assure prompt notification of the public by the extended deadline of February 1, 1982. NPPD personnel (D-4) responded that NPPD was in compliance with this requirement. In NPPD's view, actions previously taken had constituted compliance. During the conversation, the NRC

Staff member characterized such compliance as the system being "installed and operational". As it meant compliance, NPPD personnel adopted these words. See attached Affidavits of D-4 and D-5.

During the telephone conversation, NPPD was specifically directed to document the substance of the telephone conversation in writing to satisfy this request. D-5, who was present at the February 1, 1982 telephone conversation, was assigned the task of drafting a response. He contacted D-6 and asked if the mobile sirens were installed and operational. D-6 responded that he thought they were, but that he would check. D-6 then immediately attempted to contact each fire department. On the basis of these contacts D-6 satisfied himself that all the necessary sirens were installed, or would be within the next several days. See attached Affidavit of D-6. Based on these contacts, D-6 informed D-5 that the mobile sirens were installed and operational. Thereafter, D-5 prepared a letter and brought it to D-2 for signature. Prior to signing, D-2 inquired as to the correctness of the letter. D-5 informed D-2 that he had spoken with "engineering" and was given this information. Satisfied that the matter had been checked out, D-2 signed the letter on February 8, 1982 and such was mailed to the NRC. See Statement of D-2. Subsequently, during the period March 9 - 11, 1982 the NRC Staff conducted a routine inspection of an NPPD emer-

gency response exercise. On March 9, 1982, NPPD personnel briefed the NRC Staff regarding the status of the EWS. During the briefing NPPD personnel reiterated that NPPD had complied with the commitments required by Appendix E to 10 CFR Part 50. In addition, the NRC Staff was informed that, inter alia, the mobile sirens were installed and operational and invited the NRC Staff to visit such facilities. See Statement of D-4. This latter statement was based on conversations between D-4 and D-3 (who in turn asked D-6). D-6 related the same information he had related to D-5, as discussed above. During the inspection, the NRC Staff found no deviations or violations with the emergency response organization or capabilities associated with Cooper Nuclear Station. See Inspection Report 50-298/82-08.

Subsequently, on March 11, 1982 the NRC Staff conducted an unannounced inspection to determine the status of the mobile sirens. The results of this inspection revealed that of the 25 mobile sirens needed for full public notification of the designated area, three had not been placed into service. In addition, of the 7 spare mobile units, 3 had also not been placed into service and

one was inoperable due to lack of a part. In short, the NPPD statement that all such units had been placed in service was incorrect.⁵

At the exit interview conducted on March 11, 1982, at which corporate management was present, the NRC Staff directed NPPD to take actions regarding the mobile units, including (1) immediate implementation of contingent measures that would assure that notification of the surrounding population could be made in the event of an accident at Cooper Nuclear Station, (2) by March 20, 1982 assurance that all mobile siren units were installed on vehicles or ready for immediate installation, and (3) revised route maps for use by the fire department's personnel.

Prior to departing on March 11, 1982, the NRC Staff was assured by corporate management that the interim notification measures previously noted remained in effect and additional interim measures were in place which provided further assurance of adequate protection. Further, within

⁵ The facts surrounding the inoperable siren are illustrative. When D-6 distributed the mobile sirens he informed the volunteer fire departments that if they had any problems they should contact him. The involved fire department called NPPD, pursuant to the instruction of D-6, and indicated a faulty part in one of the mobile sirens. D-6 ordered a new part, received it and personally delivered it to a volunteer fireman at his place of business. See Affidavit of D-6.

several days all necessary sirens had been made fully operational, a meeting with affected fire department personnel had been held wherein the responsibilities of such individuals were reiterated, and a schedule for revision of the route maps had been established. By letters from corporate management to the NRC of March 19, April 13, and April 20, 1982, NPPD conveyed its response to the concerns raised by the NRC Staff. In short, NPPD management took prompt and thorough corrective action to remedy the alleged deficiencies noted by the NRC Staff.

Over and above the minimum corrective actions required, NPPD corporate management authorized and purchased 10 additional mobile units. These units were assembled at the Cooper Nuclear Station for use as necessary. Further, this proposed enforcement action has reinforced within NPPD's involved staff (1) the requirement to provide accurate and timely information regardless of the consequences; (2) the open avenues of communication which must be maintained; (3) the continuing need for management attention to all facets of regulatory response and (4) the need to closely track all NRC Staff requirements. NPPD has also revised its procedures so that, relative to Nuclear Engineering Department activities assigned by the Division Manager of Licensing and Quality Assurance, both the Nuclear

Engineering and Licensing Departments will be more formally involved in NRC submittals. NPPD has also provided D-3 with additional personnel.

It is to be noted that on April 12, 1982, corporate management, including two members of the Board of Directors met with the Regional Administrator in Arlington, Texas to discuss this matter.

By letter of May 24, 1982, NPPD informed the NRC that after corporate management had reassessed the capability of its mobile siren system, it was committing to the installation of tone alert radios as the primary means of notification in the 0-10 mile EPZ in areas not covered by the fixed siren system. Such actions would render the mobile siren system as a back-up means of notification. By letter of August 5, 1982 the NRC stated that there were no violations or deviations identified within the scope of its June 30 and July 1, 1982 inspection of the tone alert system.

On August 9, 1982, approximately five months after the NRC first reported on the unacceptable status of the mobile sirens, the NRC Staff issued to NPPD the subject Notice giving rise to this response. Immediately thereafter, members of corporate management were in contact with members of the NRC Staff and on August 16, 1982 corporate management came to Washington, D.C. to discuss the matter further. Thereafter, on September 21, 1982,

corporate management, including two members of the Board of Directors, met with the Regional Administrator in Arlington, Texas to discuss the matter.

III. SPECIFIC RESPONSE TO
ALLEGED VIOLATIONS

In the Notice, the NRC Staff alleges violations by NPPD in two areas, viz., (1) three alleged material false statements and (2) an alleged failure to comply with Commission regulations. These two areas are addressed seriatim:

A. Three Alleged Material False Statements

1. Specific NRC Violations

The NRC Staff alleges that NPPD made 3 material false statements to the Staff regarding compliance with Commission regulations, viz., (1) "[D]uring a telephone conversation in January 1982 between C.A. Hackney, NRC Region IV and NPPD's Manager of Licensing and a licensing engineer, (2) in a February 8, 1982 letter to NRC Region IV from the NPPD's Division Manager of Licensing and Quality Assurance, and (3) during a March 9, 1982 oral briefing to NRC by various NPPD personnel, the licensee stated that the prompt public notification system for the Cooper Nuclear Station had been installed and was operational. With regard to such statements the NRC Staff alleges that NPPD's prompt notification system was not installed and operational as of the dates indicated in the statements,

and thus, each statement constituted "a material false statement within the meaning of Section 186 of the Atomic Energy Act of 1954, as amended." NRC asserts that each material false statement made is a Severity Level II violation and, accordingly, has proposed civil penalties of \$96,000 for each such statement.

2. NPPD Answer

As set forth below, NPPD denies that the statements at issue are material false statements. With regard to corrective action, NPPD notes that immediate corrective measures were taken on March 11, 1982 to affirm that the continued interim public notification system was still in effect assuring the continuation of adequate means for emergency notification of the public. Further, by March 16, 1982 all mobile siren units were in service and NPPD had met with affected fire department personnel and reemphasized their duties. NPPD also notes that it has now installed a tone alert radio system which renders the mobile siren system as a back-up system. This new system was inspected and found acceptable to the NRC Staff on June 30 and July 1, 1982. Additional examples of corrective action are the changed procedures regarding the Licensing and Nuclear Engineering Departments' interaction in correspondence to NRC and the provision of additional manpower to the Nuclear Engineering Department.

At the outset, NPPD notes that the precise meaning of and statutory limitation on the term "material false statement" is not entirely clear. A material false statement is a false statement made to the NRC within the statutory bounds of the Atomic Energy Act, as amended, which would be considered by and have an influence on a reasonable Staff member in reaching a decision. Virginia Electric Power Company (North Anna Power Station, Units 1 and 2), ALAB-324, 3 NRC 347, 358-9 (1976); see Weinstock v. United States, 231 F.2d 699, 701-02 (D.C. Cir. 1956). Case law clearly dictates that whether a statement is material in a given context must "be judged by the facts and circumstances in the particular case." North Anna, supra, 4 NRC at 487, quoting Weinstock v. United States, supra, 231 F.2d at 701-02.

The statutory authority for NRC to assess civil penalties for material false statements is found in Sections 234, 186 and 182 of the Act. Section 234 provides that the NRC may impose a civil penalty against any licensee who commits any violation for which a license may be revoked under Section 186. Section 186 states that any license may be revoked for any material false statement in the application or any statement of fact required under Section 182. Section 182 provides that the Commission may, before expiration of the license, require written statements in order to enable the Commission to determine

whether a license should be modified or revoked. It further provides that statements made in connection with, licenses under Section 103 shall be made under oath or affirmation. Thus, since the subject statements were not made as part of an application, the critical inquiry is whether the alleged material false statements made by NPPD were found in any written statement of fact required by Section 182.

Section 182 (as relevant here) authorizes the Commission "at any time after the filing of the original application, and before expiration of the license, [to] require further written statements in order to enable the Commission to determine...whether a license should be modified or revoked." It further provides that "statements in connection with" licenses issued under Section 103 shall be made under oath and that such statements must be in writing and be signed by the licensee. Thus, in order for the Commission to exercise its statutory authority in Section 234 and assess a civil penalty for a material false statement, such statement must have (1) been required to enable NRC to determine whether a license should be modified or revoked, (2) if made "in connection with" a power reactor license, been submitted under oath and (3) written and signed by the licensee. These characteristics are not present in the alleged material false statements submitted by NPPD.

First, there is absolutely no basis to conclude that the Staff sought information from NPPD in order to ascertain whether its license should be revoked or modified. NPPD was contacted along with all other licensees, as part of a larger Staff effort to determine the extent of compliance with NRC prompt notification requirements. Further, as explained in detail below, the Commission itself established a civil penalty schedule to assure that prompt compliance with this requirement would be achieved. It did not, so far as we have been able to determine, consider as enforcement options license modification or revocation.

Moreover, the Commission's own regulations set forth the procedures NRC follows when requesting information relating to possible license revocation or amendment. 10 CFR §50.54(f) states:

The licensee will at any time before expiration of the license, upon request of the Commission submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended or revoked.

At no time did the NRC Staff invoke this provision or even hint that the information was being sought for the purposes of deciding whether NPPD's license should be modified or revoked. Therefore, the submittals in dispute could not have been required by Section 182.

Second, the alleged material false statements could not have been required by Section 182 because none of them were required by NRC to be submitted under oath. Section 182 is clear: "statements made in connection with...licenses under [Section 103] shall be made under oath."

When Congress amended Section 182 to delete the requirement that all applications and statements submitted to NRC, be under oath, it stated:

Section 5 amends section 182 of the Atomic Energy Act of 1954 to require applications and statements in connection with licenses to be in writing and signed by the applicant or licensee. The applications for, and statements made in connection with sections 103 and 104 are required to be made under oath or affirmation. The Commission is authorized to require any other application and statement to be made under oath or affirmation. However, this authority is not required to be used in all instances. [S. Rep. No. 2530, 84th Cong., 2d Sess., reprinted in [1956] U.S. Code Cong. §Ad. News 4426, 4427 (emphasis added)].

The Act could not be clearer: statements required in connection with licenses issued under Section 103 must be under oath if the statutory basis for requiring the statement is to be found in Section 182 of the Act. At no time did NRC require (or even request) that NPPD submit under oath the statements now deemed by the Staff to be materially false.⁶

⁶ A literal reading of the last sentence of Section 182 could suggest that the NRC may request statements from power reactor licensees which need not be submitted under oath and which, presumably are not "in connection with" their license. The difficulty with this position is that Section 182 authorizes the NRC to request information only to enable it to act on license

(footnote continued)

Third, two of the three alleged material false statements were either not written or not signed.⁷ Specifically, the Staff alleges in its Notice of Violation that during a telephone conversation in (sic) January 1982, NPPD submitted a material false statement when it erroneously stated that its prompt notification system was installed and operational.⁸ A telephone conversation does not by any stretch of the imagination constitute a written statement.

Similarly, with respect to the third alleged material false statement, the Notice of Violation claims only that during an oral briefing, NPPD erroneously advised the Staff of the status of its prompt notification system. Again, this oral representation does not in itself constitute a material false statement such that the Commission could have lawfully invoked its civil penalty authority.⁹

(footnote continued from previous page)

applications or to determine if a license should be revoked or modified. Statements concerning license revocation or modification on their face are statements made "in connection with" a power reactor license. Therefore, such a construction of Section 182 would allow NRC to circumvent in large measure the requirement that all statements "in connection with" a power reactor license be under oath.

7 As stated above, in order for a material false statement within the meaning of Sections 234, 186 and 182 to exist, such statement must be written.

8 Notice of Violation at 1.

9 Id. To the extent the Staff alleges that written submittals distributed to NRC constituted a material
(footnote continued)

In sum, a material false statement, as that term is used in the Act, is a very specific type of statement. Within the context of an enforcement action taken against a power reactor license, such statement must be in writing and signed by the licensee; it must be under oath if submitted "in connection with" a power reactor license; and it must be required by NRC in order to enable that agency to determine whether a license should be modified or revoked. None of those characteristics are present in this enforcement action. Therefore, in this context it appears that NRC lacks the statutory authority to impose any civil penalty on NPPD as a result of the erroneous information inadvertently transmitted to NRC.

NPPD does not mean to suggest that NRC is powerless to take action when it learns that a licensee has submitted information which, although erroneous, does not constitute a material false statement. Section 234 provides that the Commission may assess a civil penalty against any person who violates any licensing provision of Section 103 or any "rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder." Section 161(c) authorizes the Commission to "obtain such information...as the Commission may deem necessary or proper in exercising...the adminis-

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false statement, NPPD notes that none of those handouts were signed, as is required by Section 182.

tration or enforcement of this Act, or any regulations or orders issued thereunder." Therefore, implicit in every Section 103 license is the condition that, pursuant to Section 161(c) the Commission may request information.¹⁰ In the event the Commission exercises this authority and the information submitted is erroneous, then a license condition to submit correct information would arguably be violated and a civil penalty could be imposed.

NPPD also questions whether the statements made were "material" in a legal sense. In determining materiality "the question is whether the decision of the person or body to whom the statement is submitted might be affected by the falsity." North Anna, supra, 3 NRC at 359. While NPPD acknowledges that NRC relied upon the statement in question, the issue must be viewed from the perspective of what action would the NRC have taken if it had been properly informed. Precedent for this approach is found in the NRC's January 18, 1981 enforcement letter to Boston Edison concerning its Pilgrim plant. Therein, at page 5, the NRC states:

¹⁰ Because the NPPD submittals were not under oath or affirmation the Commission was not exercising its authority under Section 182 to request information. Rather, it was acting under Section 161(c). However, it is NPPD's position that a material false statement allegation cannot be sustained under Section 161(c). To hold otherwise would subject every inaccurate statement made by a licensee to a potential material false statement claim. Congress did not contemplate such a result as seen in Section 182 of the Act.

This false statement is material in that had the Commission been correctly informed on October 19, 1979 that the Pilgrim facility did not comply with 10 CFR 50.44, prompt remedial action would have been required.

In the instant Notice the NRC has stated that "the false statements were material in that had the NRC known of the true situation action would have been taken by the NRC to assure compliance."

Here, NPPD maintains that even if the NRC Staff had been made aware of the in-service status of the mobile siren equipment in February of 1982, it would have only taken the action which indeed was finally taken, i.e., a proposed \$12,000 civil penalty for failure to comply with the regulations from March 1-12, 1982. Precedent for this position is found in the Commission statement extending the compliance date from July 1, 1981 to February 1, 1982, and in the NRC's August 9, 1982 letter to H.D. Kosman which states:

...consistent with the enforcement actions contemplated for licensees who had not completed installation and initial testing of the prompt public notification system by March 1, 1982, a civil penalty of \$1,000 is being proposed for each day between March 1 and March 12, 1981...

With respect to remedial action, the Commission's extension statement reveals that additional measures were unnecessary given the significant advances that had been made in emergency planning over the past several years. Specifically, the Commission stated:

...There exists sufficient reason to believe that appropriate protective measures can and will be taken for the protection of the health and safety of the public in the event of a radiological emergency during the extended time period for compliance. [46 Fed. Reg. 63031 (1981)]

Case specific experience at Haddam Neck and Rancho Seco are consistent with this position. In any event, remedial action was already in place as reflected in NPPD's June 30, 1981 letter.

In sum, NPPD questions whether knowledge of the statement would have had any ultimate bearing on, or would have changed the result of, any decision reached by a reasonable Staff member. Thus, NPPD questions whether such statements were material within the meaning of the Atomic Energy Act.

Lastly, NPPD maintains that the statements in issue are not false. NPPD asserts that if a basis exists which is supportive of a statement such should not be characterized as false. NPPD is mindful that intent is not a necessary ingredient for a material false statement. NPPD is also mindful of the Appeal Board's reference in North Anna,¹¹ therein the Appeal Board stated:

One further observation must be made before closing this portion of our opinion. As will also be later seen, this case does not involve an attempt to hold VEPCO accountable under Section 186 for a statement which, although no basis existed upon which its falsity could have been perceived upon reasonable investigation at the time made, is nevertheless revealed by subsequent developments to be untrue. Although we therefore need not now come to grips with

¹¹ 3 NRC 347, 357-358 (1976).

that question, we note in passing our substantial doubt that Section 186 accountability would exist in such circumstances. Scientific inquiry is an evolving process. Inherent in it is the need to draw interim judgments founded upon the best information then available. These judgments may survive the passage of time or may instead--as was the long held tenant that the atom is the smallest particle of matter--be subsequently demonstrated to be contrary to fact. Although Congress was understandably concerned that facts which are either known or ascertainable upon reasonable inquiry not be misrepresented, it seems most unlikely that the legislature intended Section 186 to make an applicant a guarantor that every scientific judgment fairly made and fairly report would not later be proven wrong.

With respect to the February 1, 1982 telephone conversation, D-4 intended to convey simply that NPPD was in compliance with the regulation. A basis existed for this position, as discussed in the facts.¹² The February 8, 1982 letter and March 9, 1982 briefing comments were intended to convey that the mobile sirens were installed and operable. Again there was a basis for these identical statements. D-6, based upon the rapport he had developed with the volunteer fire departments and telephone calls he

¹² The cover letter to the proposed enforcement package alleges that it was error for NPPD to give information in a NRC initiated telephone call without first checking with responsible NPPD employees. As is the nature of informal conversations with the NRC, information is exchanged between the individuals on the call. If verification is necessary such is done after the call. In this instance such a precise course of action was followed. Accordingly, this factor should not enter into the NRC's deliberations regarding the disposition of the proposed enforcement action.

made immediately following February 1, 1982 believed that the necessary mobile sirens would be installed prior to the February 8, 1982 letter.¹³

As a practical matter, this treatment of material false statement has significant merit from a policy perspective. In the relationship between a licensee and the NRC there is a great deal of informal communication that takes place on a day to day basis. Such communications are based on an understanding and trust that, absent bad faith, inaccurate statements which are bound to occur will be corrected promptly upon discovery without enforcement actions. Indeed, absent this element of trust a licensee would refrain from any informal discussions with any NRC Staff personnel regarding any licensing matter. Rather, the licensee would assure that any correspondence or communication with the NRC Staff took place in a formalistic manner only after a completed and thorough review within the entire licensee technical structure. As a practical matter, this would be an unacceptable, unworkable situation.

¹³ The cover letter to the proposed enforcement action also alleges that D-3 "did not question the February 8, 1982 letter even though he had information indicating the letter was not accurate." As reflected in D-3's Statement to the NRC and his attached Affidavit, D-3, like D-6, was of the view that the mobile sirens would be installed within several days. Thus this allegation should not weigh against NPPD.

NPPD maintains that while the information conveyed to the NRC by NPPD was inaccurate, the facts of the case should weigh against treating such inaccuracy in the classical sense of a material false statement.

Notwithstanding NPPD's concern that the statements made were not classical material false statements within the definition of the Act, NPPD further submits that such statements should not be viewed as three separate statements, giving rise to three separate civil penalties. NPPD submits that the February 1, 1982 telephone call is separate from the other two incidents. In that call D-4 was simply attempting to convey that NPPD had met its June 30, 1981 commitment of compliance with the regulation.¹⁴

¹⁴ The facts reveal that during the telephone conversation, D-4, in response to NRC Staff questioning, took out the June 26, 1981 letter, read NPPD's commitment, and stated NPPD had met such. See Affidavits of D-4 and D-5. In further support of this position are statements made in the May 28, 1982 Commission briefing:

MR. MATEKIS: But, first of all, we are talking about a telephone conversation. When you talk about telephone conversations several months later there could have been other things that were said. But the effect of that telephone call was that they were saying that it was installed and operational. They might have had some qualifications or something else, I don't know, but it was just a telephone call that wasn't documented. [Tr. 38-39 (emphasis supplied)]

* * * *

MR. MATEKIS: I agree. All I am saying is, you know, maybe giving them the benefit of the doubt in January, but, you know, there is no doubt when they wrote it in the letter. [Tr. 40]

See attached Affidavit of D-4. As noted, during the conversation, the NRC characterized such compliance as being installed and operational. As it meant compliance, NPPD personnel adopted these words. See attached Affidavits of D-4 and D-5.¹⁵ Given the facts surrounding NPPD's assumption that it was in compliance, this statement should not be the subject of an enforcement action.¹⁶ As NPPD has acknowledged, the remaining incidents (the February 8, 1982 letter and the March 9, 1982 briefing comment) were statements intended to convey that the mobile sirens were installed and operational. Both of these statements were premised upon the same set of facts,

¹⁵ See also the NRC Staff statement made in the May 28, 1982 Commission briefing:

...D-4 maintained that the only responsibility NPPD had towards the mobile part of the siren system was to distribute the units. He kept saying it is up to the state. Of course, the state would be the actuating authority for the system. In any of the emergency notification systems it is up to the local officials to cause the system to be activated.

So since the units had already been distributed the previous July, D-4 [kept] telling Mr. Hackney, yes, it is installed and it is operational, or it is there and it is in place, I don't know exactly what the words were --- [Tr. 44-45]

¹⁶ Alternatively, NPPD notes that the letter of February 8, 1982 was a documentation of the preceding telephone conversation of approximately February 1, 1982. Such documentation was made at the express direction of the NRC Staff. Thus, NPPD maintains that clearly these two communications with the NRC Staff were in a practical and legal sense one statement.

to wit, D-6's assumption that the sirens were installed. Accordingly, these latter two statements should be treated as one.

In sum, with regard to allegations regarding material false statements, NPPD maintains that the statements made to the NRC were not in a practical or legal sense material false statements that should give rise to an enforcement action of the severity proposed. Further, NPPD maintains that the statements made to the NRC Staff should not be viewed as three separate statements giving rise to three separate proposed civil penalties.

B. Compliance With Commission Regulations

1. Alleged Violation

The NRC Staff states that prior to March 12, 1982, NPPD had failed to comply with Commission regulations which required that NPPD demonstrate that "administrative and physical means had been established for alerting and providing prompt instructions to the public within the plume exposure pathway emergency planning zone." Notice at p. 2. Specifically, the NRC alleges as follows:

"five of the mobile sirens identified by the licensee in the Emergency Plan as part of its prompt notification system had not been removed from their shipping container and a sixth mobile siren had a missing part. Further, during the [NRC] investigation, statements from representatives of the local volunteer fire fighting organizations who were to use the mobile sirens indicated that they had not received indoctrination or training prior to March 12, 1982 with respect to their role in the operation of the prompt public notification system. As a result, the

facility was operated with an inoperable public notification system from February 1, 1982 through March 12, 1982, inclusive, a period of 40 days." [Id.]

Thus, the NRC Staff asserts that NPPD has committed a Severity Level III violation and proposes to assess a total civil penalty of \$12,000. Id.

2. NPPD Answer

For the reasons set forth below, NPPD takes issue with the allegation that it was in violation of Commission regulations. Further, NPPD notes that immediate corrective measures were taken on March 11, 1982 to affirm that the interim public notification measures were in effect. In this regard, by March 16, 1982 all mobile siren units were in service and NPPD had met with affected fire department personnel reemphasizing their duties. NPPD also notes that it has now installed a tone alert radio system which renders the mobile siren equipment as a back-up notification system. This new system was inspected and found acceptable to the NRC Staff on June 30 and July 1, 1982.

In early 1981, NPPD proceeded on a course of action which it felt would achieve compliance with the regulations.¹⁷ To be clear, such actions included the

¹⁷ NPPD's course of action was premised upon its interpretation of the public notification aspect of the emergency planning regulations. NPPD asks the NRC to consider the uncertainty surrounding emergency planning in the 1980 time-frame, the time when NPPD made its decision as to the requirements of the
(footnote continued)

installation and testing of the fixed siren system and distribution of functionally capable mobile siren equipment to local volunteer fire departments. NPPD alerted the NRC Staff to its course of action on January 2, and June 30, 1981, and specifically requested concurrence. NPPD received no positive direction from the NRC Staff that would indicate that such action would not result in full compliance with the regulations. Indeed, NPPD, as set forth in the discussion of the facts, received indications from the Staff that its plan was acceptable. These indications included a Staff statement to the Commission on August 27, 1981 that NPPD was in compliance with the regulations. Accordingly, NPPD took such actions in good faith.¹⁸ Given this factual

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regulations. Not only was NRC's emergency planning guidance document, NUREG-0654, being revised, so was the delineation of responsibilities in the Memorandum of Understanding with FEMA. Given the fact that this regulation required for the first time that NPPD take actions outside the site boundary and given NPPD's reluctance to give directions to entities outside of its control, NPPD determined that its NRC obligation would be met, as pertinent here, by the distribution of the mobile alert sirens. Given FEMA's off-site responsibilities, NPPD assumed that the adequacy of such system was a matter within FEMA's jurisdiction. Under the circumstances, NPPD maintains that its approach should not be viewed as a careless disregard for the regulations, but rather is deserving of consideration in the NRC's resolution of the matter.

¹⁸ See NRC Staff statements made during the Commission briefing of May 28, 1982 which reflect that one member of the NRC Staff had discussions and arguments with NPPD prior to January 1982 regarding what actions
(footnote continued)

background, NPPD submits that there is a reasonable basis to conclude that it was in compliance with the public notification aspect of the emergency plan regulation.

NPPD understands that the NRC takes a different view of the regulation.¹⁹ NPPD simply asks the NRC to take the above discussion into consideration in its resolution of this matter.

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constituted compliance with the regulations at issue in this enforcement action. Tr. 45-46. Significantly, the NRC Staff stated that despite its implicit understanding of NPPD's position, it never formally expressed to NPPD that NPPD's interpretation of the regulations was incorrect. Id. If it were so clear that NPPD was not correct in its interpretation of the regulations, given the importance of emergency planning, the NRC Staff clearly should have formally contacted NPPD regarding this issue. NPPD requests that consideration be given to this factor.

- ¹⁹ In addition to requiring installation, the NRC in its Notice also states that statements from local fire fighting organizations who were to use the mobile sirens indicate that they had not received indoctrination or training prior to March 12, 1982. NPPD acknowledges that no such formal indoctrination or training was provided by NPPD. However, consistent with its view of the regulations, such was not required by the NRC. In any event, NPPD, through D-6, took steps in contacts with the local firefighters to advise them as to what was expected. A reading of the statements of VFD-1 through VFD-6 indicates that they knew they were to use the sirens to warn people along the routes in their locale.

IV. CONCLUSION

In conclusion, NPPD takes issue with the reach of the alleged violations set forth in the NRC Staff's Notice. In this regard, NPPD submits that the events giving rise to this enforcement action are subject to varying degrees of emphasis. NPPD maintains that its actions in this regard were taken in good faith without any intent to deceive or in any way mislead the NRC Staff. Further, actions taken by NPPD subsequent to the discovery of the alleged violations clearly reflect responsive and prompt attention and concern of NPPD towards its obligations and duties to assure the protection of the public health and safety.

Attachments

1. Affidavit of Richard D. Boyle (D-3)
2. Affidavit of Jeffrey D. Weaver (D-4)
3. Affidavit of Kim C. Walden (D-5)
4. Affidavit of Myrle E. Hadcock (D-6)

ATTACHMENT 1

AFFIDAVIT OF RICHARD D. BOYLE (D-3)

Comes now Richard D. Boyle, being first duly sworn, and states as follows:

1. In my sworn statement of March 19, 1982, I stated:

"Regarding the February 8, 1982 letter from Mr. Pilant to the NRC wherein he states the Cooper Eary [sic] Warning System has been installed and is operational, I was aware that this letter was being sent. One or two days prior to Feb. 8 I was informed that Mr. Pilant had to respond to the NRC and I had conversation with Mr. Hadcock about it. He told me that he had made some checks and that the sirens 'would be installed', indicating that they would be installed very shortly. As far as the information he gave to Mr. Pilant's licensing division, I was not present and do not know what he actually told them. I received a copy of the Feb. 8 letter on a later date but did not talk to Hadcock about it."

It is necessary that I clarify this statement.

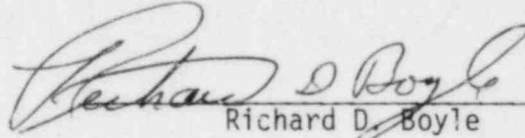
2. Myrle Hadcock constantly kept me informed as to his activities in regard to the Early Warning System. Mr. Hadcock kept me advised of his numerous contacts with the volunteer fire departments within the 10-mile radius of Cooper Station and their willingness to cooperate and work with us on this matter. Therefore, when Mr. Hadcock advised me that the volunteer fire departments either had the mobile units installed or assured Mr. Hadcock they would be installed shortly, I was confident that the volunteer firemen would do what they said.

3. I did not receive the February 8 letter until after Jay Pilant had sent it to the NRC. I felt at that time it was unnecessary to advise Mr. Pilant of the potential inaccuracy after the letter had been sent to the NRC because I was confident the firemen had done what they said they would do.

4. Regarding my request to upper management for additional staff, I would point out that I received authorization to increase my staff on February 2, 1982

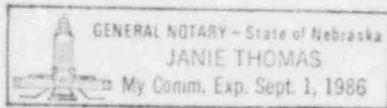
and feel that any deficiencies in the size of my staff which may have existed in the Nuclear Engineering Department during the time frame of the installation of the Early Warning System have now been alleviated.

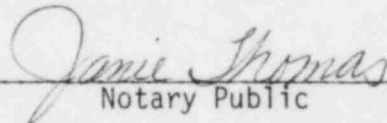
And further affiant saith not.


Richard D. Boyle

Subscribed and sworn to before me this 5th day of October,

1982.




Notary Public

ATTACHMENT 2

AFFIDAVIT OF JEFFREY D. WEAVER (D-4)

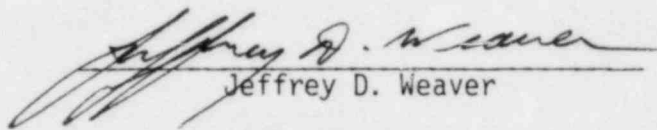
Comes now Jeffrey D. Weaver, being first duly sworn, and states as follows:

1. On or about February 1, 1982, I was involved in a telephone conversation in my office with Mr. Hackney of the NRC and Mr. Kim Walden. I was Mr. Walden's immediate supervisor at that time. As I recall, Mr. Hackney inquired about numerous items regarding the Early Warning System. One of the items which Mr. Hackney inquired about was with regard to the status of the mobile siren system. I recall pulling out of my file Mr. Boyle's letter of June 26, 1981. I read portions of the letter to Mr. Hackney during the phone conversation. Nowhere in said letter is there any statement to the effect the mobile units were "installed and operational", only that the mobile equipment will be distributed to local fire departments.

2. I am very careful to insure the accuracy of any response to the NRC. When Mr. Hackney called regarding the Early Warning System, I knew there was a previous written response to the NRC on that matter. My normal procedure is to refer to the written document in responding to any subsequent questions on the matter to insure that I continue to be accurate. Nowhere in the June 30, 1981 letter to the NRC is there language indicating the mobile system is "installed and operational". My distinct impression is that what I intended to convey to Mr. Hackney on the phone was that NPPD had met its commitment for the Early Warning System at Cooper Station. I had not been advised by anyone on NPPD's staff at that time that the mobile units were "installed and operational". Consequently, although I cannot be absolutely positive I did not use those words in responding to Mr. Hackney's question, I feel very strongly that my intention was to convey nothing more to Mr. Hackney than NPPD had

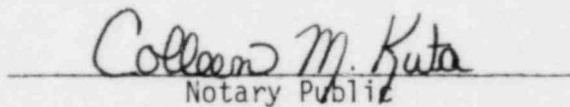
met its commitment.

And further affiant saith not.


Jeffrey D. Weaver

Subscribed and sworn to before me this 5th day of October,
1982.




Notary Public

ATTACHMENT 3

AFFIDAVIT OF KIM C. WALDEN (D-5)

Comes now Kim C. Walden, being first duly sworn, and states as follows:

In the sworn statement I made on March 30, 1982, I stated that Mr. Jeff Weaver and I were involved in a telephone conversation with Mr. Charles Hackney of the NRC. Mr. Weaver was my supervisor and although I was involved with the Early Warning System at the time of the phone call, I believe Mr. Weaver was the primary spokesman during that phone conversation. In response to Mr. Hackney's question regarding the status of the mobile system, I recall Mr. Weaver retrieved a document from his files and read a portion of it to Mr. Hackney. I cannot clearly recall whether I responded to Mr. Hackney's questions but since Mr. Weaver was my supervisor, I normally defer to his experience when dealing with the NRC.

And further affiant saith not.

Kim C. Walden

Kim C. Walden

Subscribed and sworn to before me this 5th day of October,

1982.



Colleen M. Kuta
Notary Public

ATTACHMENT 4

AFFIDAVIT OF MYRLE E. HADCOCK (D-6)

Comes now Myrle E. Hadcock, being first duly sworn, and states as follows:

1. I am an Engineering Technician in the Nebraska Public Power District ("NPPD") Nuclear Engineering Department. I have been employed by NPPD or its predecessor for approximately twenty-three (23) years.

2. I am presently the Director for the Columbus/Platte County Civil Defense Agency and have held that title for the past 7½ years. I have also been a member of said Agency for some 18 years. Being director of the Agency requires my constant interaction with local volunteer fire departments and civil defense volunteers in the area surrounding Platte County. My long association and involvement with civil defense programs have acquainted me with procedures existing in the State of Nebraska regarding notification of the public in times of disaster, fires and bad weather.

3. My involvement with the Early Warning System at Cooper Nuclear Station began on or about May 12, 1980, when I was assigned by management to conduct a survey of existing public warning systems within a 10-mile radius around Cooper Station. I believe this assignment was given to me primarily because I am the Director of the Columbus/Platte County Civil Defense Agency. In furtherance of my assignment, I contacted the civil defense directors in those counties located within the 10-mile radius of Cooper Station. I then conducted field research to determine the location and type of civil defense equipment existing within the 10-mile radius. Upon my completion of my research, I submitted a report to management.

4. My involvement continued in this matter when I was directed to assist a consulting firm engaged by NPPD for the purpose of devising a system that would notify the public within the 10-mile radius of Cooper Nuclear Station in

the event of any emergency.

5. It was subsequently determined by management that the District should investigate the possibilities of utilizing fixed sirens to notify the more densely populated areas and mobile sirens to notify the sparsely populated areas. I was directed by management to pursue this concept and began to gather the necessary data.

6. Based on my experience in the area of civil defense, I was convinced that the volunteer fire departments would be the most appropriate organization to contact regarding the mobile system concept. Consequently, I contacted each volunteer fire department chief in Peru, Brownville, Nemaha, and Shubert, Nebraska, and Rockport and Watson, Missouri. My discussions with them entailed an explanation of the mobile system concept and a request that they accept a mobile siren which would be mounted on skids. After discussing with the volunteer fire department chiefs on several occasions the potential problems of housing and insuring constant availability of such relatively large equipment, I soon became convinced that the larger, skid-mounted mobile sirens would not be an effective system. I advised Mr. Boyle of my opinion.

7. It was at this time that I was directed by management to explore the possibility of utilizing mobile siren units which could be mounted on volunteer firemen vehicles. I again contacted the volunteer fire department chiefs within the 10-mile radius of Cooper Station. My initial inquiries related to the number of volunteer firemen which could be made available from each department in the event of an emergency. After this was determined, I discussed with each volunteer fire department chief the specific area which I wanted them to be responsible for. Each volunteer fire department chief agreed to be responsible for notifying the public in their specified area. I also indicated to them that I would be providing maps of the specific routes they should follow at a later date. My primary focus at this time was to purchase and distribute the mobile equipment to each volunteer

fire department by the July 1, 1981 deadline.

8. Based upon the information I obtained from the volunteer fire department chiefs, Mr. Boyle and I studied a map of the area within the 10-mile radius of Cooper Station to determine the proper number of units necessary to cover each area within the time limitations we understood a licensee had to notify the public in the event of an emergency. It was determined that there should be 25 routes with 7 spare units. I was then directed to gather the necessary information for purchasing the mobile equipment. The order was placed on May 15, 1981.

9. The mobile units were received at Cooper Nuclear Station on or about June 19, 1981 and I personally distributed the mobile siren units to each of the localities as specified below:

Nebraska

Peru - 5 units
Brownville - 5 units
Nemaha - 5 units
Shubert - 2 units

Missouri

Rockport - 10 units
Watson - 5 units

I instructed a member of each volunteer fire department on the proper procedures to assemble the mobile siren units. With regard to Watson, Missouri, I attended the volunteer fire department meeting during which the mobile siren units were assembled. I informed the volunteer fire departments that if they experience any problems regarding the mobile sirens to be sure to contact the plant and the plant would advise me.

10. After I completed the distribution of the mobile equipment and the installation of the fixed sirens, I began working on the route maps for each involved volunteer fire department. These route maps were distributed to them prior to February 1, 1982. Based upon comments I received, I subsequently revised certain route maps.

11. During the period between July 1, 1981 and February 1, 1982, I made numerous trips to the surrounding area around Cooper Station with regard to the Early Warning System. I observed the progress of the volunteer fire departments in assembling the units and observed many vehicles which had the mobile siren units installed.

12. On or about February 1, 1982, Mr. Kim Walden informed me he was required to prepare a letter to be sent to the NRC stating the mobile sirens were installed and operational. He asked me if such were the case. I told him I thought they were but that I wanted to check to make sure this was accurate. I immediately attempted to contact each volunteer fire department. In response to my inquiries, I was either informed the units were all assembled or I was assured they would all be assembled shortly. I was unable to contact anyone in Shubert; however, I requested Dick Garst, a former volunteer fire department chief from Watson, Missouri, to go to Shubert and assist them in assembling their units. He assured me he would do so. On the basis of this information, I reported to Mr. Walden that the mobile units were installed and operational, believing that the firemen would do what they said they would do.

13. I stated in my sworn statement that I did not recall discussing with Mr. Boyle the responses to my inquiries to the volunteer fire departments regarding the status of the mobile siren system. Upon reflection I do remember the conversation and essentially conveyed the above facts to him.

14. I would also like to comment on the inoperable siren referenced in the enforcement action. Some time during January 1982, I learned that two of the

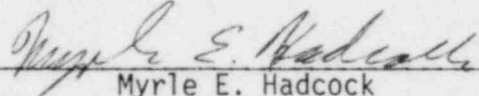
mobile siren amplifiers were inoperative. On January 14, 1982, I sent the malfunctioning equipment back to the repair center. My records show that the repair center returned the units on or about January 21, 1982. Upon my receipt of the same, I immediately distributed the repaired equipment back to the proper volunteer fire department. With regard to the faulty unit located in Watson, Missouri, I gave the repaired unit to a member of the volunteer fire department that worked at a local gas station next to the fire station.

15. I initially discussed with the volunteer fire department chiefs the areas in which I wanted them to notify the public in the event of an emergency. Subsequently, I distributed specific route maps. I also informed them that in the event of an emergency, the sheriff's department would advise them. These volunteer firemen are dedicated people. Based upon the equipment I distributed to them, the existing emergency response plans in existence at that time and the dedication of the volunteer firemen, I was confident the public would have been notified in the event of an emergency at Cooper Nuclear Station.

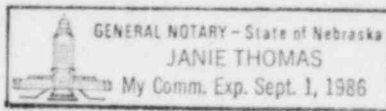
16. Between May of 1980 and March of 1982, I was involved in meetings and numerous discussions with individuals on NPPD's staff regarding the Early Warning System. I also attended a Public Notification Systems Seminar put on by Federal Signal Corporation September 11, 1980 which covered, among other things, NRC/FEMA regulations relating to public notification requirements and the specific requirements and procedures contained in 10 CFR 50, NUREG-0654/FEMA-REP-1, and FEMA Guidance Memorandum No. 13 draft. Based upon my personal log book, I spent approximately 76 days in and around the 10-mile radius area

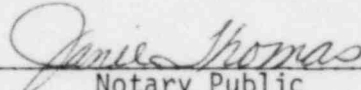
of Cooper Station regarding the implementation of the Early Warning System.

And further affiant saith not.


Myrle E. Hadcock

Subscribed and sworn to before me this 5th day of October,
1982.




Notary Public

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 50-298
Nebraska Public Power District)	License No. DPR-46
Cooper Nuclear Station)	EA 82-46

WRITTEN ANSWER REGARDING PROPOSED
IMPOSITION OF CIVIL PENALTY

I. INTRODUCTION

On August 9, 1982, the Nuclear Regulatory Commission ("NRC" or "Commission") issued a Notice of Violation and Proposed Imposition of Civil Penalty ("Notice") to Nebraska Public Power District ("NPPD") regarding alleged violations of NRC requirements "related to the timely installation and testing of the prompt public notification system required by 10 CFR 50.54(s)(2)(i) and Section IV.D.3 of Appendix E to 10 CFR Part 50." As a result of NPPD actions arising out of such alleged violations the NRC Staff proposes "civil penalties of \$96,000 . . . for each of three [alleged] material false statements made related to NRC requirements and civil penalties of \$12,000 . . . for the [alleged] failure between March 1 and March 12, 1982 to install and initially test a prompt notification system."

The Notice states that within 30 days NPPD may pay the civil penalties or "protest the imposition of the civil penalties in whole or in part by a written answer" which may: "(1) deny the violations listed in this Notice in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalties should not be imposed. In addition to protesting the civil penalties in whole or in part, such answer may request remission or mitigation of the penalties." Subsequently, by letter of August 24, 1982, the NRC extended until October 8, 1982 the time for NPPD to file a written answer regarding this Notice.

For the reasons set forth below, NPPD takes issue with the proposed civil penalties and requests their remission or significant reduction.

II. WRITTEN ANSWER

In accordance with the provisions of the Notice, NPPD responds to the subject areas set forth above:

A. DENIAL OF VIOLATION RAISED IN NOTICE

NPPD's response to this category is set forth in Section III of NPPD's Written Statement or Explanation regarding Notice of Violation and Proposed Imposition of Civil Penalty ("NPPD's Written Statement"), incorporated herein by reference.¹ In short, NPPD does not believe

¹ The Notice expressly authorizes incorporation by
(footnote continued)

that the facts are supportive of the specific alleged violations set forth in the Notice.

B. DEMONSTRATION OF EXTENUATING CIRCUMSTANCES

NPPD maintains that the following extenuating circumstances regarding the incident giving rise to this enforcement action should be considered in determining the severity level of the violation and the amount of civil penalty imposed:

1. NPPD maintains the requirements imposed by the regulations at issue here were subject to interpretation with regard to (a) the specific nature of the requirements, and (b) the responsibilities and interactions of federal, state and local agencies.

With regard to the regulations themselves, Appendix E to 10 C.F.R. Part 50 states that "each nuclear utility power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ." The statement of considerations which summarizes this requirement states as follows:

3. Provisions for the State and local governmental authorities to have a capability for rapid notification of the public during a serious reactor emergency, with a design objective of

(footnote continued from previous page)
reference of material contained within the Written Statement.

completing the initial notification within 15 minutes after notification by the licensee (Section IV.D).

NPPD was under the impression that the requirement meant that the administrative and physical mechanisms (i.e., equipment) were to be obtained and turned over to the appropriate officials (over which, of course, NPPD has no positive control). Thus, provisions would have been provided to give local individuals the "capability" to promptly notify the public. NPPD notes that other utilities have also had varying interpretations of this term.

With regard to the responsibilities and interactions of various agencies, NPPD was under the impression that FEMA was the organization which would be responsible for the conduct and review of assuring the adequacy of state and local emergency response plans to include implementation of the prompt notification system. NPPD's position in this regard finds support in a reading of the requirements, regulations and memoranda of understanding regarding this issue. For example, in the statement of considerations for the emergency planning regulations, FEMA's responsibilities in this area are set forth as follows:

Specifically, the MOU (Memorandum of Understanding) identified FEMA responsibilities with respect to emergency preparedness as they relate to NRC as the following:

1. To make findings and determinations as to whether State and local emergency plans are adequate.

2. To verify that State and local emergency plans are capable of being implemented (e.g., adequacy and maintenance of procedures, training resources, staffing levels and qualification, and equipment).

In addition, this statement of considerations sets forth the NRC responsibilities as follows:

Specifically, the NRC responsibilities for emergency preparedness identified in the MOU are:

1. To assess licensee emergency plans for adequacy.

2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).

3. To review the FEMA findings and determinations on the adequacy and capability of implementation of State and local plans.

In short, the guidance in this area sets forth a pattern of actions wherein the off-site emergency plans, to include the prompt notification system under the control of State and local governments, will be reviewed and determined to be acceptable by FEMA. Such review will be conducted during the test to be observed by FEMA. The results of FEMA's evaluation and analyses will be furnished to the NRC who will then make a determination of

the readiness of the emergency response area around a nuclear power plant. Given this understanding of the regulations NPPD felt that once it had provided the State and local governments with the means of implementing a prompt notification system NRC requirements were satisfied. In that FEMA's test would not be conducted for some time, NPPD was working closely with the off-site personnel in an attempt to get them to put in place the mechanisms previously provided to them prior to the conduct of the FEMA test.

Against this backdrop, NPPD would note that the subject regulation would require it to have positive control over State and local off-site personnel. In this area, dealing with such off-site personnel is completely different than dealing with personnel over which NPPD has control. In that NPPD has no direct control over such off-site personnel, it cannot demand that the equipment furnished be installed or otherwise tested at any time.

NPPD is cognizant that the above factors are at odds with the NRC Staff's view of the regulations. However, given that NPPD was seeking in good faith to comply, NPPD requests that such matters be given consideration.

2. In the Commission Notice extending the July 1, 1981 deadline to February 1, 1982, the Commission stated that in the event of failure of a licensee to meet a deadline

the Commission would take enforcement actions promptly at that time. With regard to this, the Commission stated as follows:

In determining appropriate enforcement action to initiate, the Commission will take into account, among other factors, the demonstrated diligence of the licensee in attempting to fulfill the prompt public notification capability requirements. The Commission will consider whether the licensee has kept the NRC informed of the steps that it has taken, when those steps were taken and any significant problems encountered, and the updated timetable which the licensee expects will be met in achieving full compliance with the prompt public notification capability requirements. [46 Fed. Reg. 63031, 63032 (December 30, 1981)]

NPPD maintains that it demonstrated diligence in "attempting" to fulfill the prompt notification capability requirement as it interpreted it. In this regard, NPPD took prompt action in 1980 and 1981 to assure that it was in compliance with the July 1, 1981 deadline. Indeed, NPPD felt it was in compliance and by telephone conversation of August 13, 1981 (as previously noted in Section II of the Written Statement) informed the Staff of such compliance. Indeed, the NRC Staff was also under the impression that NPPD was in compliance. In its August 1981 Report to the Commission regarding the extension of the

deadline, the NRC Staff reported that only 12 of the operating licensees had complied with the earlier deadline; NPPD was one of these 12.

Further, NPPD maintained a dialogue with the NRC in an attempt to keep it informed of the action NPPD was taking. In this regard, a review of relevant documents reveals that NPPD was under the impression that the NRC Staff was well aware of the actions that NPPD had taken to indicate compliance with the rule. Reference is made to NPPD letters of January 2, 1981 and June 30, 1981 and telephone calls from the NRC in this regard. (See Section II of Written Statement.)

In short, NPPD requests that the above considerations be weighed by the NRC in its deliberations regarding the penalty to be imposed in this action.

C. DEMONSTRATION OF ERRORS IN THE NOTICE

Set forth in Section II of the Written Statement, incorporated herein by reference, are the facts relating to the incident giving rise to this enforcement action. Comparison of such facts with those alleged by the NRC Staff in the Notice indicates that a disagreement exists. Principal among these is the status of NPPD's compliance with the emergency plan regulations. NPPD submits that

consideration of its facts should cause the NRC to reconsider its position in this regard and resolve the matter in a mutually satisfactory manner.

In addition, NPPD questions the Severity Level II categorization of the alleged material false statements. NPPD maintains that the facts associated with this action do not warrant such a severe categorization. In this regard, NPPD notes that the Commission's Enforcement Policy expressly provides that "in determining the specific level of a violation, consideration will be given to such factors as the position of the person involved in the violation (e.g., first line supervisor or senior manager), the significance of any underlying violation, the intent of the violator (i.e., negligence not amounting to careless disregard, or deliberativeness), and the economic advantage, if any, gained by the violations." Appendix C to 10 CFR Part 2, note 15.

Reviewing the facts here, NPPD submits that its management personnel in early 1981 established criteria, procedures and mechanisms to assure compliance with the pertinent EWS regulation by the established deadline. Indeed, NPPD management closely monitored activities until, in July 1981, such criteria had been met. While the NRC Staff may now differ with the precise criteria that had been established in early 1981, and fault NPPD

management in this regard, the deliberate and careful attention of NPPD management in assuring that those pre-established criteria were met is clearly not reflective of a careless disregard for Commission regulations. Even after NPPD believed that regulatory requirements had been met, NPPD continued to work with off-site personnel to assist in implementation. During this period before implementation of the EWS, interim notification procedures to assure the prompt notification of the public in the event of an accident at Cooper Nuclear Station were in place. See State and local plans referenced in January 2, 1981 NPPD letter to NRC. Thus, there was no possible significant public health and safety impact as a result of the alleged violation. Further, the NRC Staff agrees that NPPD management did not deliberately provide false information to the Staff. Indeed, NPPD management fully believed the information it received from the responsible NPPD employee, and furnished to the Staff, was accurate. Finally, NPPD notes that its actions did not, and were not, designed to work as an economic advantage for NPPD.

In short, NPPD maintains that an analysis of the factors which the Commission's Enforcement Policy considers important, weigh against establishing a higher severity level for the alleged violation. In this regard, NPPD notes that the overall description of Severity Level

II violations (e.g., "very significant violations," exhibiting "careless disregard," failure to provide Part 21 notice) does not correspond to the facts here. Rather, at most, the Severity Level III status appears more in line (e.g., "significant violations," "inadequate review or failure to review"). Support for NPPD's position is found in the dissenting opinion of Commissioner Roberts regarding this enforcement action and in the letter to the Commission from the NRC project manager referenced in Commissioner Roberts' dissent.

In addition, NPPD submits that the NRC was in error in treating the three statements made by NPPD personnel as requiring three separate civil penalties. This position is apart from the issue of whether such statements constituted one, two or three alleged false material statements. (See, Section III of Written Answer incorporated herein by reference). The NRC Enforcement Policy states that "to emphasize the focus on the fundamental underlying causes of a problem for which enforcement action appears to be warranted, the cumulative total for all violations which contributed to or were unavoidable consequences of that problem will generally be based on the amount shown in the table as adjusted." 46 Fed. Reg. 9992. The Policy further provides that if more than one fundamental problem is involved, "each of which, if viewed independently,

could lead to civil penalty action by itself, then separate civil penalties may be assessed for each fundamental problem." Id.

Both the Notice of Violation and Proposed Imposition of Civil Penalty, as well as the NRC letter to NPPD transmitting the Notice, state that the single underlying cause for this enforcement action is an alleged lack of management oversight. Specifically, in its August 9 transmittal letter, NRC states at page 2 that "[t]his unacceptable performance by NPPD management, and not the erroneous information provided to the NPPD staff, constitutes the cause of the violations in this case." Similarly, in the Notice of Violation and Proposed Imposition of Civil Penalties on page 1, NRC states that the alleged violations "apparently arose as a result of inadequate involvement of licensee's management to assure compliance with the prompt notification system requirement and not from the action of the licensee's lead engineer who provided erroneous information to the licensee's staff."

NPPD submits that in proposing a civil penalty for each alleged material false statement and other violations related to NPPD's prompt notification system, the NRC misapplied the Enforcement Policy. Specifically, NRC should have identified all alleged violations and assigned each a severity level. A cumulative civil penalty should

have been proposed based on the violation having the highest severity level. For example, in this case NRC alleged that three material false statements were submitted to NRC and that NPPD failed to comply with certain portions of NRC's prompt notification requirements. The single underlying cause of the violations is alleged management inadequacy. The most serious single violation alleged was a Severity Level II. Therefore, the cumulative base civil penalty proposed should have been \$64,000.² Arguably, this amount could have been increased by 25% since there were allegedly multiple examples of a particular violation. Therefore, the civil penalty proposed by NRC is excessive and inconsistent with the Enforcement Policy.

D. DEMONSTRATION OF OTHER REASONS WHY THE PENALTIES SHOULD NOT BE IMPOSED

1. NPPD submits that it is important for the NRC to have a consistent enforcement policy so that industry is well-advised as to its responsibilities. The instant enforcement action is contrary to this view in that it is at odds with other recent NRC enforcement actions. Specific

² NPPD has asserted, immediately above, that a Severity Level II is unwarranted; rather at most this incident involves a Severity Level III event. See also Section D, infra. So categorized, the cumulative base civil penalty should be \$40,000, which amount could be increased or decreased, pursuant to facts set forth in the Enforcement Policy, up to 100%.

reference is made to the NRC's January 18, 1982 enforcement action involving Boston Edison's Pilgrim Unit 1, a case involving allegations of lack of management attention. The facts therein that are germane to the instant case are as follows:

The licensee informed the NRC in a letter dated October 19, 1979, that "we comply with 10 CFR 50.44 with existing equipment." The NRC requested the licensee to supply the basis for this position, but such was not presented. In fact, this position was premised upon local operator action. On March 28, 1980, the licensee determined that local operator action to meet the requirements of 10 CFR 50.44 could not be assured because post-LOCA radiation levels may cause the reactor building to be inaccessible. The licensee informed the NRC on May 28, 1981 that they were not in conformance with 10 CFR 50.44. Conformance was accomplished on June 5, 1981.

Based upon such facts the NRC determined that the licensee had made a material false statement. Such was categorized as a Severity Level III violation. Clearly the facts of the instant case are of a lesser magnitude than Pilgrim:

- (1) the EWS deficiency existed in NPPD from February 1, 1982 to March 12, 1982, while the Pilgrim situation existed from October 19, 1979 to June 6, 1981;
- (2) NPPD was not aware of the EWS deficiency until March 12, 1982 while Pilgrim knowledge was imputed from March 28, 1980;
- (3) the EWS deficiency involved the inoperability of a

limited number of mobile sirens while in Pilgrim the containment purging system was in issue; (4) interim measures were in effect in NPPD's case; (5) NPPD's prior enforcement history was good. In sum, if Pilgrim was a Severity Level III violation, NPPD is deserving of a lesser severity level categorization than that imposed.

2. Alleged management inattention is at the root of this enforcement action. However, once having determined what its responsibilities were with respect to the public notification requirements of the emergency planning regulation, management took appropriate measures in 1980-81 to assure that such was promptly accomplished. If it is now maintained that management was incorrect in its determination of regulatory responsibility, such should be the narrow focus of the NRC and not action or inactions flowing from the initial decision.

With respect to the circumstances surrounding the three alleged material false statements, NPPD alleges that good management practices were followed. As is set forth in the factual presentation of Section II of the Written Statement and the sworn statements of NPPD personnel, after participating in the February 1, 1982 telephone conversation, D-5 immediately verified with D-6 that the mobile sirens were installed and operational. Thereafter, D-5 prepared a letter to this effect for D-2's signature.

When presented the letter, D-2 inquired as to its accuracy. D-5 informed D-2 that he had checked the matter out. Satisfied, D-2 signed the letter.

With respect to the March 9, 1982 briefing comment, D-4, prior to making his presentation to the NRC Staff, asked D-3 (who in turn asked D-6) to prepare a status report regarding both the fixed and mobile sirens. D-6's status report, reflected in a March 5, 1982 chart, indicated that the mobile sirens were installed and operational. Prior to final typing of the chart, D-4 called D-3 to assure himself as to the accuracy of the status report. D-6 had provided D-3 the necessary assurance; D-3 in turn assured D-4.

In sum, NPPD maintains that reasonable steps were taken to assure that comments provided the NRC were accurate. NPPD asks that this factor be taken into consideration.

3. In the August 9, 1982 Commission statement regarding the enforcement action, the Commission stated as follows: "the Staff is directed to increase the amount of proposed penalties that may have otherwise been imposed for the multiple false statement due to this inattention and the multiple occurrences within such a short period of time." NPPD maintains that the Commission's statement reflects a

misunderstanding of the factual setting regarding this situation and, further, is contrary to a rational enforcement policy.

The statement of facts previously referenced clearly indicates that NPPD management made every attempt to comply with the regulations. In sum, the actions taken, and the diligence with which the NRC Staff was kept informed of NPPD's activities, is not reflective of inattentive management practice.

In addition, NPPD questions the NRC rationale for increasing the civil penalty due to "the multiple occurrences within such a short period of time." NPPD submits that a multiple series of actions, occurring within a short period of time, arising out of the same factual cause pattern should generally be treated as one occurrence. This is consistent with the Enforcement Policy on the subject. If such multiple occurrences were spread over a long period of time, it would be indicative of more significant organizational and management failure (i.e., the problem went undetected despite ongoing QA and other audit functions designed to detect such problems.) Here, this is not the situation. Rather, the alleged false statements took place within a very short period of time. This is reflective of a possible isolated problem and not a total breakdown of management quality and assur-

ance or audit functions which over a more extended period of time would have detected the alleged problem giving rise to the inaccurate statements.

In short, NPPD maintains that the Commission position (i.e., that the civil penalty should be increased due to a series of multiple violations occurring within a short period of time) is inconsistent with current enforcement policy and, as a practical matter, has little rational support. NPPD asks that this factor be weighed in the final disposition of the proposed enforcement action.

4. NPPD is a public utility. As such it has no stockholders. Rather, the cost of operation is borne directly by the ratepayers. By penalizing the public utility, the NRC is penalizing the very group intended to be protected by the Commission's regulations. NPPD asks that this matter be considered in a resolution of this issue.

5. The Enforcement Policy has been retroactively applied. NPPD maintains that such action is contrary to law. Assure Competitive Transportation, Inc. v. Red Arrow Freight Lines, 635 F.2d 1301, 1307 n.6 (7th Cir. 1980) ("a policy statement must operate only prospectively"); see also Pacific Gas & Electric Co. v. FPC, 506 F.2d 33, 38 (D.C. Cir. 1974).

The Enforcement Policy became effective March 9, 1982. Two of the three alleged material false statements involve events that occurred in February 1982. The third statement coincidentally occurred on March 9, 1982.³ Given the dates involved, retroactive application of the Enforcement Policy was made. NPPD asserts that this error should be taken into consideration.

6. Unlike many enforcement actions, the facts surrounding this case are not clear cut. Rather, as the NRC Staff advised the Commission, based on the facts then presently available to them, "this is one of the hardest we have faced." Commission Meeting of May 28, 1982 at Tr. 3. NPPD submits that with its presentation of the facts, it would appear that the case is even less clear cut and justification of the magnitude of the penalty imposed is even more difficult.

E. REQUEST FOR REMISSION OR
MITIGATION OF PENALTIES

In the Notice the NRC Staff stated that any request for remission or mitigation of the penalties should address the "five factors contained in Section IV.B, 10 CFR Part 2, Appendix C." NPPD maintains that the circumstances involving this incident clearly warrants remission

³ The NRC has stated in their enforcement action that the installation of the mobile sirens should have been accomplished by February 1, 1982. The enforcement action, however, covers the period of March 1-12, 1982.

or mitigation of the civil penalties imposed by the Notice. The bases for NPPD's request in this regard are the extenuating circumstances and errors in the NRC Staff's Notice as set forth above, as well as an analysis of the relevant factors contained in the Commission's Enforcement Policy. Accordingly, NPPD addresses these relevant factors seriatim:

1. Corrective Action to Prevent Recurrence

The NRC Enforcement Policy provides for a reduction of the proposed civil penalty by as much as 50% of the base value for "prompt and extensive corrective action" in response to an alleged violation. In this regard NPPD maintains that its actions immediately following the discovery of this alleged violation were prompt and went beyond that required to correct the situation. Specifically, on the day that the alleged violation was discovered, NPPD promptly ensured that an interim emergency notification system was in effect and would provide adequate notification to the public in the event of an accident at Cooper Nuclear Station. In addition, within days after the alleged violation was discovered, NPPD had taken action to assure that all mobile siren equipment was placed in service and all fire departments' personnel was familiar with the purpose of such sirens. Also, NPPD purchased 10 additional mobile siren units as additional

spares. Thereafter, NPPD established a tone alert radio system to act as the primary notification system rendering the mobile siren system as a back-up.

Aside from the above, this proposed enforcement action has reinforced within NPPD's involved staff (1) the requirement to provide accurate and timely information regardless of the consequences; (2) the open avenues of communication which must be maintained; (3) the continuing need for management attention to all facets of regulatory response and (4) the need to closely track all NRC Staff requirements. NPPD has also revised its procedures so that, relative to Nuclear Engineering Department activities assigned by the Division Manager of Licensing and Quality Assurance, both the Nuclear Engineering and Licensing Departments will be more formally involved in NRC submittals. NPPD has also provided D-3 with additional personnel.

In sum, after the alleged violation was discovered NPPD actions were both prompt and extensive in addressing the situation. In this regard, NPPD maintains that such actions are reflective of its regard for its obligations to assure protection of the public health and safety.

Accordingly, NPPD maintains that based on this factor the NRC Staff should reduce the base value of the civil penalty up to 50%.

2. Enforcement History

The Commission's Enforcement Policy provides that the base civil penalty may be increased by as much as 25% depending on the enforcement history of the licensee. While this mitigating factor apparently is not expressly directed towards reducing the civil penalty, NPPD has been directed by the Order to consider this matter as a mitigating factor. Accordingly, NPPD maintains, as discussed in the extenuating circumstances above, that its outstanding record of no previous civil penalties warrants consideration of significant reductions (up to 25%) of the proposed civil penalties.

The NRC Staff clearly recognizes that NPPD has an outstanding past record. For example, in their recently initiated systematic assessment of licensee performance ("SALP") program⁴ for the period 1979 through 1980 the NRC Staff rated NPPD in the highest category, above average. Significantly, only nine other utilities were rated in this category. To provide perspective twenty-five other

⁴ The NRC Staff states that "SALP is an integrated part of the regulatory process used to assure licensee adherence to the NRC rules and regulations. SALP is oriented towards furthering NRC's understanding of the manner in which: (1) the licensing management directs, guides, and provides resources for assuring plant safety; and (2) such resources are used and applied." Appendix to June 21, 1982 letter from J.T. Collins (NRC) to NPPD.

utilities were rated in an average category and fifteen utilities were rated in a below average category. The NRC Staff characterizes this category as follows:

Above Average--A combination of characteristics having positive or desirable qualities; displaying unusually good performance.

A facility is characterized as being above average if there is little evidence of administrative, managerial, or material problems; if there are a relatively low number of substantive construction or operational events or items of noncompliance (when compared to others); and if there are few (or no) substantial regulatory issues involving the facility. There are few (if any) significant items of noncompliance, no significant breakdown in management controls, and a substantial fraction of the significant activity area reviewed are characterized as above average. [NUREG-0834, "NRC Licensee Assessments" (August 1981) at p. 2.]

In making such ratings the regional SALP board reviewed all licensee technical and management performance and the quality of licensee safety actions. The rating given "represented the best collective judgment of senior NRC managers viewing licensee nuclear safety performance from a national perspective." Id at p. i. With regard to Cooper Nuclear Station, the NRC Staff stated as follows:

Cooper was assessed to be a well-managed facility. The licensee demonstrated an excellent record of refueling outage management. The total number of items of noncompliance identified at Cooper was relatively low when compared with other operating

reactor facilities. Due to the low incidence of items of noncompliance, IE reduced the frequency of inspection effort in three areas (surveillance, training, and design changes). The licensee's management was characterized as normally taking action that assured long-term resolution to problems. [Id. at Appendix A]

More recent SALP evaluations were conducted for the periods July 1, 1980 through June 30, 1981 and July 1, 1981 through June 30, 1982. While the results of these evaluations are formatted differently than the previous evaluation, the results clearly show that NPPD is an above average utility. In the July 1, 1980 through June 30, 1981 ratings in the area of plant operations, the NRC classified NPPD in Category I which is defined as "a combination of attributes which demonstrates achievement of superior safety performance; i.e., licensee management attention and involvement is aggressive and oriented toward nuclear safety; licensee resources are ample and effectively used such that a high level of performance with respect to operational safety or construction is being achieved. Reduced NRC attention may be appropriate." See, June 21, 1982 letter, supra, at p. 3.⁵ In this

⁵ It should also be noted that NPPD, consistent with this proposed enforcement action, was classified in this June 1982 report as being in Category III with regard to the area of emergency preparedness. Specific recommendations were made in this area to include a failure of NPPD's emergency organization being adequately defined with regard to authorities, responsibilities and
(footnote continued)

report, the performance appraisal of the project manager for the Cooper Nuclear Station reflected the high standards of NPPD. An overall rating by the NRC project manager indicated that NPPD was a Category I plant. The project manager stated that "the overall quality of these responses and submittals [to information required by the NRC] has been good and often provide more than just the minimumly requested or needed to be acceptable."

In the July 1, 1981 through June 30, 1982 ratings, of the 17 subject areas examined, NPPD was placed in Category I in 8 areas, Category II in 2 areas and Category III in 2 areas. In addition, NPPD received an overall Category I rating from the Office of Nuclear Reactor Regulation. See Letter of September 22, 1982 from G.L. Madsen to J.M. Pilant at Appendix p. 2.

In view of this past record, the NRC project manager for Cooper Nuclear Station in a document presented to the Commission in this proposed enforcement action stated that NPPD's past performance has been above average with regard to "(1) receiving no previous civil penalties; (2) SALP

(footnote continued from previous page)
interrelationships for performing the various emergency tasks and functions described in the emergency plan.
Id at p. 8-9.

ratings; (3) a number of complete unresolved safety issues, generic issues, multi-plant issues and TMI action plant items not yet complete"

NPPD maintains that the imposition of extremely harsh penalties in the face of such a past performance record is unwarranted, inappropriate and may be counterproductive. Specifically, such actions could result in the transmittal of a signal to industry that there is no reason to attempt to put forth the extra commitment of resources to achieve high standards. In addition, imposition of harsh penalties in this instance will clearly have the detrimental impact of severely limiting the open communications that takes place on a virtually daily basis between NPPD and the NRC Staff. See Section III, Written Statement.

In sum, NPPD maintains that its past operating record is a significant circumstance that warrants the removal or significant reduction of the civil penalties imposed by this Notice.

3. Prior Notice of Similar Events

The NRC Enforcement Policy provides for a 25% increase of the base civil penalty amount "for cases where the licensee had prior knowledge of a problem". Again, NPPD has been informed in the Order that it can consider this factor as relevant to mitigation. NPPD maintains,

and the record supports its position, that it had no prior knowledge of the problem. Accordingly, some amount of mitigation (up to 25%) is appropriate.

III. CONCLUSION

From the foregoing NPPD maintains that there are significant extenuating circumstances and additional factors which warrant the remission or significant reduction of the civil penalties imposed by the NRC Staff in the Notice. Thus, NPPD respectfully requests that the proposed civil penalties be remitted or reduced accordingly.