



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 5, 1991

Docket No. 55-8615
License No. SOP-10561-1
EA 91-054

Mr. David M. Manning
HOME ADDRESS DELETED
UNDER 10 CFR 2.790

Dear Mr. Manning:

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE

By your letter and affidavit dated June 6, 1991, you submitted your Answer to the NRC Order Suspending License (License No. SOP-10561-1), and Order To Show Cause Why License Should Not Be Revoked, dated May 2, 1991, and requested that it be withheld from public disclosure. This request was made in accordance with 10 CFR 2.790 and was supported by the contention that the information contained personal matters and matters related to your personal medical history and finances.

By letter dated October 2, 1991, you were notified that the NRC staff had reviewed your request and had concluded that some of the material contained in your answer to the Orders may be withheld in accordance with 10 CFR 2.790(a)(6) but that certain other material should be released and placed in the Public Document Room. In accordance with 10 CFR 2.790(c), an expurgated copy of your response and its enclosures was forwarded to you as notice that these documents would be placed in the Public Document Room thirty (30) days from the date of that letter unless you requested withdrawal of these documents in accordance with 10 CFR 2.790(c).

This letter is to inform you that the NRC staff did not receive a request to withdraw the stated documents. Therefore, in accordance with 10 CFR 2.790(c), the enclosure was placed in the Public Document Room on the date of this letter.

You should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your withheld information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

Sincerely,

Brian C. McCabe

Brian C. McCabe, Project Manager
Project Directorate I-1
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

Enclosures:
As stated

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

91 J -7 2 02

In the Matter of)
DAVID M. MANNING,)
Senior Reactor Operator.)

Docket No. 55-8615
License No. SOP-1056-1
Enforcement Action
No. 91-054

ANSWER AND REQUEST FOR HEARING OF
DAVID M. MANNING TO ORDER SUSPENDING
LICENSE (EFFECTIVE IMMEDIATELY) AND
ORDER TO SHOW CAUSE WHY LICENSE
SHOULD NOT BE REVOKED

* CONTAINS PERSONAL AND CONFIDENTIAL *
* INFORMATION EXEMPT FROM DISCLOSURE *
* PURSUANT TO 18 CFR, SECTION 2.796 *

DAVID M. MANNING, Senior Reactor Operator, by his attorney, D. Jeffrey Gosch, Esq., as and for his Answer and Request for Hearing (Answer) in response to the "Order Suspending License (Effective Immediately) and Order To Show Cause Why License Should Not Be Revoked" (Order) of the United States Nuclear Regulatory Commission (Commission), dated May 2, 1991, respectfully alleges and states that:

I. PRELIMINARY/PROCEDURAL BACKGROUND

1. D. Jeffrey Gosch, Esq., is an attorney duly admitted to the practice of law in the United States District Court for

the Northern District of New York and the courts of the State of New York and has been so admitted since 1974. He is the attorney for David M. Manning, as related in paragraph no. "2." of the affidavit of Mr. Manning (Exhibit Tab A to this Answer) which is included and made part of this Answer by reference, and makes this Answer on behalf of Mr. Manning. His post office address and telephone number are 407 South Warren Street, Suite 200, Syracuse, New York 13202, (315) 472-4487.

2. He is fully familiar with the facts and circumstances of this matter either of his own knowledge or upon such conversations, affidavits, medical and/or financial records and other exhibits as may be referred to herein and the contents hereof are true to the best of his knowledge, information and belief and this Answer is not interposed for any purpose of delay.

3. David M. Manning is the holder of a Senior Reactor Operator License No. SOP-10561-1 (License), has continually held such License since September 2, 1986 and most recently had it renewed by the Commission on September 9, 1988.

4. On May 2, 1991, the Commission issued the Order which suspended Mr. Manning's License indefinitely and further ordered him to show good cause to the Commission why it should not be revoked.

5. The Order gave Mr. Manning twenty (20) days to answer and request a hearing or to consent to the revocation of his License. Mr. Manning's attorney, by telephone request followed

by a written request, sent by facsimile, sought additional time to answer. The Commission granted an additional twenty (20) days to answer. Copies of the exchange of correspondence in regards thereto are part of the Reference Exhibits, which are separately bound but submitted herewith and made part of this Answer, at Exhibit Tab K.

6. David M. Manning ADMITS some of the factual allegations of sections no. "I.", "II", "III" and "V" of the Order as more particularly set forth in his affidavit (Exhibit Tab A hereto). David M. Manning DENIES any inference or subjective conclusion as may be contained in the Order that he is not reliable, trustworthy, a person of integrity or is not a person that the Commission and his employer, the Power Authority of the State of New York (Power Authority) can be reasonably assured to exercise sound judgment in the safe and efficient operation of the James A. FitzPatrick Nuclear Power facility (FitzPatrick) of the Power Authority.

7. David M. Manning DENIES any inference that he materially misrepresented to the Commission in any of his applications for licensing or relicensing as to his [REDACTED] as he truly did not believe himself to have a "habit" as requested to be disclosed on his NRC form 196, completed in 1986, and "habit" was not defined on the form. Mr. Manning further DENIES any inference that the conduct complained of him in the Order was not directly caused and related to his [REDACTED]

II. RESUME

A. EMPLOYMENT BACKGROUND

8. David M. Manning came to work for the Power Authority at FitzPatrick on January 26, 1981 as a Auxiliary Operator A, after being honorably discharged from the United States Navy. He became a Nuclear Operator B on January 26, 1982, a Nuclear Control Operator on December 21, 1982, a Senior Nuclear Operator on August 20, 1983, and on September 2, 1986 was licensed as a Senior Reactor Operator by the Commission.

9. David M. Manning, prior to the instant matter, had never been subjected to any disciplinary proceeding by the Commission or the Power Authority.

10. Mr. Manning's performance of his duties prior to October 9, 1990 had always been beyond reproach as attested to in the affidavits of William Fernandez, II (Fernandez), Resident Manager at FitzPatrick, Roger Locy (Locy), FitzPatrick Operator Superintendent and Douglas J. Lindsey (Lindsey), FitzPatrick Planning Superintendent, attached hereto and made part hereof as Exhibit Tabs B, C & D. Fernandez, Locy and Lindsey have each had several years experience, directly and indirectly, supervising Mr. Manning. Mr. Manning's exemplary performance in his duties was reflected in his being upgraded to Assistant Shift Supervisor on three occasions, each for an extended period of time between January 1987 and October 1990, (January 9 to April 25, 1987 [10 days]), September 21, 1988 to February 25, 1989 [157 days] and

January 14 to October 9, 1990 (267 days)) for a total of five hundred thirty (530) days, over a year and one-half (1 1/2) in this upgrade in less than a four (4) year period. He has also previously been offered a promotion to the position of Assistant Shift Supervisor on a permanent basis.

11. David M. Manning's excellent work performance was also recognized in his being selected as the only operator to assist in the design and construction of the plant specific operations room simulator for FitzPatrick.

12. David M. Manning's work performance has never been called into question as being performed while under the influence of drugs or alcohol nor has he ever brought drugs or alcohol to FitzPatrick.

13. David M. Manning has never been convicted of any crime nor has ever been charged with a crime related to the possession and/or sale of illegal drugs or narcotics.

14. David M. Manning has always been trustworthy and reliable as an operator and employee of the Power Authority and has always successfully completed his training and recertification as an operator. Prior to October 9, 1990 he had almost ten (10) years of unescorted access to FitzPatrick.

B. REHABILITATION

15. As a result of his refusal to provide a second urine sample on October 9, 1990, Mr. Manning's unescorted access was

suspended for fourteen (14) days and he was referred to the Employee Assistance Program (EAP) of the Power Authority as required by 10 CFR part 26.

16. The EAP evaluation of Mr. Manning occurred in two sessions (October 11 and 17, 1990) with [REDACTED]. The evaluation recommended an inpatient treatment program which Mr. Manning voluntarily entered on October 22, 1990, within three (3) days of the completion of the evaluation. See Exhibit Tabs A and B of the bound Medical/Financial Record exhibits of Mr. Manning, submitted herewith and made part of this Answer by reference.

17. [REDACTED]

18.

[REDACTED]

19. David M. Manning successfully completed the thirty (30) day treatment program on November 21, 1990

[REDACTED]

20.

[REDACTED]

21.

[REDACTED]

22.

23.

C. RETURN TO EMPLOYMENT

24. After being discharged from inpatient treatment and being cleared for return to work (Exhibit Tab D of Medical/Financial Records), David M. Manning met on two occasions with William Fernandez, II, Resident Manager and other staff of the Power Authority at FitzPatrick, to review his rehabilitation and ability to return to work. It was at these meetings he gave the assurances required by the Fitness For Duty Program of the Work Activity Control Procedure of the Power Authority (Exhibit Tab F of Reference Exhibits). Mr. Manning committed to his continued compliance with the KAP program and to continue his abstinence from the use of drugs.

25. The Power Authority, by its Resident Manager and other staff have engaged in, and followed, a responsible and careful program of observation and monitoring of Mr. Manning since his return to work to ensure that his return to operator duties would be appropriate for both the Power Authority and Mr. Manning. Concurrently with his rehabilitation and return to unescorted access, the Power Authority was keeping the Commission regularl

apprised of what it was doing in regards to Mr. Manning by correspondence, telephone conferences and personal meetings as were particularly set forth in the affidavit of Mr. Fernandez (Exhibit Tab B).

26. No objections to the treatment program of Mr. Manning, his return to unescorted access or carefully phased program to return him to operator's duties were made by the Commission although it was kept up to date as to what the Power Authority was doing in regards to him.

27. Mr. Manning returned to unescorted access on December 3, 1990 and began his new duties in the Planning Department. While in the Planning Department he assisted in the planning, scheduling, execution and monitoring of a planned outage at FitzPatrick and played a significant role in the success of the outage while accumulating a considerable amount of overtime (212.5 hours), most of it prior to the completion of the outage on March 18, 1991. Mr. Manning suffered no relapse while performing these stressful duties.

28. Mr. Manning's performance of his duties in the Planning Department was the same exemplary performance of his duties as he always had done, see Affidavit of Lindsey at Exhibit Tab D, and the Power Authority was looking to begin to restore him to his duties as an operator when his License was suspended by the Order of the Commission. In fact, it was not until after Mr. Fernandez's inquiry to Commission staff in March of 1991 in regards to restoring Mr. Manning's 10 CFR, part 55 duties, that

1

the Commission took any steps to investigate the matter - over four and one-half months after Mr. Manning's unescorted access had been restored and over six months from it being informed of the happenings of October 9, 1991.

B. CONTINUED AND CURRENT REHABILITATION

29. Mr. Manning has been drug free since October of 1990 and continues to be so. He has additionally given up alcoholic beverages. He has committed himself to compliance with and obedience to the Fitness For Duty requirements of the Commission and the Power Authority.

30. Since his return to work on December 3, 1990, Mr. Manning has been subject to eight (8) random urine drug tests, with the most recent being on June 3, 1991 - all have been negative. Mr. Manning continues to be subject to frequent random testing and has voluntarily consented to have such testing go on for as long as necessary to continue to provide the Power Authority and the Commission with reasonable assurance as to his safety, integrity and trustworthiness by being drug free.

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37. The Fitness For Duty Program of the Commission and the Power Authority has been successful in regards to Mr. Manning. A specially skilled employee's drug use was detected and the employee was evaluated, treated and rehabilitated.

B. COCAINE/DRUG DEPENDENCY

38. The Commission needs to understand and appreciate that cocaine dependency, untreated, has as one of its component elements, denial, which can affect the conduct of the dependent person in seeking to avoid drug tests or other disclosure of their addiction. As was stated in Cocaine A Clinician's Handbook, (A. Washton & M. Gold, Editors, 1987) at page 225:

Denial, which is an important component of cocaine dependence, may interfere with legitimacy of a sample collection. Cocaine addicts will do almost anything to keep their cocaine dependence a secret. (emphasis supplied)

39. David M. Manning's acknowledgment and acceptance of his problem was further manifested in his open and candid conversation with the Investigator Cullings of the Commission.

III. THE COMMISSION LACKS RATIONAL BASIS FOR SUSPENSION OR REVOCATION OF MR. MANNING'S LICENSE

40. The Commission's suspension of the License of David M Manning is without a rational basis for the following reasons:

A. The Commission never sought to have Mr. Manning evaluated by a licensed and trained individual to determine the extent of his rehabilitation [REDACTED]

B. The Commission never sought the appropriate medical records of Mr. Manning as to his inpatient [REDACTED]

C. The Commission never sought to ascertain Mr. Manning's progress [REDACTED]

D. The Commission never sought any assurance from Mr Manning as to his current and future compliance with the Fitness For Duty requirements of the Commission and the Power Authority.

E. The Commission, despite its alleged concern for the lack of reasonable assurance which necessitated the immediate effectiveness of the Order, permitted the Power Authority to

return him to unescorted access for five (5) months prior to the order without taking any action. Five months which Mr. Manning performed his assigned work superbly and in a trustworthy manner.

F. The Commission's apparent rejection of its own regulations which places the decision to return an employee, or not, to unescorted access of the discretion of the Employer - the party who is most familiar with the affected employee's work record and compliance with the Employee Assistance Program. The Power Authority had intimate knowledge of Mr. Manning, his compliance with the EAP and found a substantial basis to return him to work. The Power Authority also had the experience of its carefully staged program of monitoring and evaluating him in his employment and rehabilitation prior to returning him to operator duties. Despite this, the Commission rejected, seemingly out of hand, the Power Authority's intimate knowledge and experience with Mr. Manning over the ten (10) years of his employment and his rehabilitation, for its purportedly "superior" decision making ability predicated on a one (1) day inquiry by its Office of Investigations.

G. The Commission's also apparent rejection of its own indicated goal of the rehabilitation of the employee. The Commission has previously clearly stated that the rehabilitation of the employee is preferable and, as here, if the employee is specially skilled, such an employee's fitness for duty may be enhanced by the experience over the lesser skilled employee who

has not used drugs. See particularly NUREG 1354, FITNESS FOR DUTY IN THE NUCLEAR POWER INDUSTRY, Responses to Public Comment 12-13 (May 1989) (Responses Nos. 12.4.1 and 13.1.5).

H. The Commission's actions are contrary to Federal Law and Regulation as it is discriminating against Mr. Manning its licensing of his predicated on [REDACTED]

[REDACTED] The proscription of 10 CFR part 4 apply to the Commission but which it has chose to ignore in the instant matter.

41. David M. Manning reserves the right to present such additional deficiencies in the conduct of the Commission as may become subsequently known and noticed to the Commission.

IV. CONCLUSION

42. David M. Manning, respectfully requests, for the reasons more particularly set forth in his separate Affidavit regards thereto at Exhibit tab G, that this Answer and all exhibits submitted herewith be exempt from disclosure pursuant the provisions of 10 CFR, section 2.790.

43. David M. Manning respectfully requests that a hearing be granted and, if the relief as hereinafter requested is not granted, that an oral hearing be held where Mr. Manning and witnesses on his behalf, and those for the Commission, can be presented and their creditability judged by the Presiding Officer.

44. David M. Manning further respectfully requests that the suspension of his License as a Senior Reactor Operator be set aside and the requested revocation of his License be denied, with prejudice, together with such other and further relief as to the Presiding Officer may seem just and proper.

45. The relief requested herein has not been applied for in any other proceeding or Court but David M. Manning does not waive his right to make any other application as may be provided by law, rule or regulation to redress this matter.

/s/ D. Jeffrey Gosch
D. JEFFREY GOSCH, ESQ.

Sworn to before me this
5th day of June, 1991

SARON B. BRONK
Notary Public in the State of New York
SARON B. BRONK, Notary Public
SARON B. BRONK, Notary Public

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
DAVID M. MANNING,)
)
Senior Reactor Operator.)
_____)

AFFIDAVIT

Docket No. 85-8615
License No. SOP-10561-1
Enforcement Action
No. 91-054

STATE OF NEW YORK) ss:
COUNTY OF OSWEGO)

DAVID M. MANNING, Senior Reactor Operator, being duly sworn, as and for his affidavit to the United States Nuclear Regulatory Commission (Commission) in response to the "Order Suspending License (Effective Immediately) and Order to Show Cause Why License Should Not Be Revoked," (hereinafter "Order") dated May 2, 1991, respectfully states that:

1. I am the Senior Reactor Operator who is the subject of the Order and make this affidavit in opposition to the suspension of my License as a Senior Reactor Operator and its proposed revocation as good cause exists to withdraw the suspension and to deny the proposed revocation of my License.

2. I am represented in this matter by D. Jeffrey Gosch, Esq., attorney-at-law, who is also the attorney for my collective bargaining agent, Local 2032, International Brotherhood of Electrical Workers, A.F.L.-C.I.O. (Local 2032).

3. I admit the factual allegations as set forth in section "I." of the Order in regards to my License, and what it authorizes me to do and where.

4. I admit the factual allegations as to my use of unlawful drugs in violation of the policies of the United States Nuclear Regulatory Commission (hereinafter "Commission") and of my employer, the Power Authority of the State of New York (hereinafter "Power Authority"), my effort to thwart the random drug test on October 9, 1990 and the reason therefore as more particularly set forth in sections numbered "II", "III" and "V" of the Order.



and am subject to random testing on a monthly or more frequent basis as set forth in section "II." I further admit that I told the Commission's Investigator on April 24, 1991, that I had previously tested positive for cocaine in August of 1988 but deny any inference that this had not been previously made known to the representatives of the Commission by the Power Authority in October of 1990. I also admit that I have not used any drug or unlawful substance since October 1990, that I attended a thirty (30) day inpatient treatment program and am now drug free.

5. I admit my denial of an unlawful drug or narcotic habit on my NRC form 396 (Certificate of Medical History), dated April 14, 1986, as related in "(2)" section "V" of the Order, bu


it was not a wilful misrepresentation by me as I truly believed, at that time, that my use of cocaine was not a "habit" and habit was not otherwise defined on the form.

6. I deny the subjective conclusions as to my trustworthiness and my inability or unwillingness to comply with the applicable rules and regulations of the Commission and/or the Power Authority as contained in the Order. I further deny any inference as maybe contained in the Order, that my conduct complained of in the Order, which may have been contrary to the rules and regulations of the Commission and/or the Power Authority, was not related to [REDACTED] I also deny any inference that may be contained in the Order that I ever performed my duties as a Senior Reactor Operator while under the influence of unlawful drugs or ever did so unsafely.

7. I deny each and every other allegation as to my conduct as maybe set forth in the Order not heretofore specifically admitted or denied.

8. As a result of my refusal to provide a second urine sample and subsequent determination to be treated as having tested positive, I was referred to and evaluated under the Employee Assistance Program (EAP) of the Power Authority, as agreed upon with my union, Local 2032. The evaluation took place on October 11 and 17, 1990 and, as a result of the evaluation, I entered an inpatient treatment program [REDACTED]

9. I successfully completed the inpatient treatment program at



10. After my discharge from inpatient treatment and prior to my return to unescorted access, I met twice with William Fernandez, II, Resident Manager at the FitzPatrick Nuclear Facility, and completed to his satisfaction the requirements of the Fitness For Duty Work Activity Control Program of the Power Authority. At the second meeting, Mr. Fernandez explained the staged program of evaluation and monitoring he was going to follow to ensure that, when I returned to my duties as an operator, it would be in the facility's and my best interests to do so. I readily accepted this program as I believed Mr. Fernandez to be correct in his approach as I wanted my return to operator duties to be appropriate.

11. I returned to my employment and unescorted access on December 3, 1990, but not to my previous job duties as a Senior

Reactor Operator and have been tested approximately eight (8) times, unannounced, for the presence of any unlawful drug or narcotic since my return. The most recent test occurred on June 3, 1971. I have been told that all such tests have been negative. I readily consent to have such frequent and unannounced tests continue for such period of time, as may be determined to be appropriate by the Commission and/or Power Authority, to continue to reasonably assure them that I am free of unlawful drugs or narcotic use and will remain so.

12.



13. 

14. Since my return to work at the Power Authority I had, until the Order, unescorted access and was assigned to the Planning Department, where I assisted in the planning, scheduling and execution of a planned outage for the plant. Upon information and belief, to wit, discussions with my supervisor, Douglas J. Lindsey, Planning Superintendent, the outage was successfully accomplished and I played a significant role in its success. While performing those duties, I had a large amount of overtime, the majority of which occurred between December 3, 1990 and the completion of the outage on or about March 18, 1991 (212.5 hours - over 9.6 hours per week) (see Affidavit of Mr. Patrick Frawley at Exhibit Tab E). These hours were, in part, accumulated by long work days and work weeks that were stressful but which I handled well and without relapse.

15. I originally came to work for the Power Authority on January 26, 1981 as an Auxiliary Operator A. I became a Nuclear Operator B on January 26, 1982, became a Nuclear Control Operator on December 21, 1982, less than a year later, on August 20, 1983, became a Senior Nuclear Operator, and on September 2, 1986 became a Senior Reactor Operator. On three separate occasions I have been temporarily upgraded to Assistant Shift Supervisor for extended periods of time - January 9, 1987 to April 25, 1987 (106

days): September 21, 1988 to February 25, 1989 (157 days) and January 14, 1990 to October 9, 1990 (267 days) (although carried on the Power Authority's personnel records until December 3, 1990) - for a total of 530 days, over a year and one-half in this upgrade in less than a four-year period (see Frawley Affidavit at Exhibit Tab E). I also was the only operator selected to serve on the liaison team for the design and construction of the plant specific operations room simulator.

16. To the best of my knowledge, but which I believe others will also attest to, I have always been an exemplary employee in the performance of my duties through out my ten plus years of employment at the Power Authority. I have always successfully completed my recertification and other testing requirements. Further, and perhaps more importantly, my supervisors and my fellow employees have been very supportive of my rehabilitation and return to work. Since my return on December 3, 1990, [REDACTED]

17. I have never used unlawful drugs or narcotics while on the job or prior to the commencement of my shift which would have affected my on the job performance and always had the utmost concern for the safety of the plant and its efficient operation. My concern was manifested by my use of my sick leave to ensure that I was never under the influence or possibly under the influence while on the job. I never brought any unlawful drugs or alcohol to work and have never sold any drugs or given them t

any Power Authority employee. I had unrestricted access to the facility for over ten years, prior to October 9, 1990 and for five months after my discharge from the inpatient treatment program and return to work, and never committed any act which would place my trustworthiness in the plant at issue. I have never been convicted of any crime, let alone one related to illegal drug possession or sale. I am trustworthy.

18. I realize and understand from my treatment that my denial of my [redacted] is an integral part of the [redacted] and which manifested itself in my efforts to deceive the Power Authority on my random drug test in October of 1990 and to be less than candid in my self evaluations as to whether I had a drug "habit" when answering the questions on NRC form 396 in bot 1984 and 1986 for the Commission.

19. I have been free of unlawful drugs and narcotics for over seven (7) months and will continue to be so. [redacted]

[redacted]

I have, and will continue to, control [redacted] and will remain free of all illegal drugs and narcotics.

20. My licensing as a Senior Reactor Operator is very important to me as it is my livelihood and the satisfactory or better performance of my job duties has always been a matter of great personal pride to me. Although the Power Authority, for

the imposition of the sanctions required by part 26 of 10 CFR, is treating this matter as a first positive test. It is viewing my test of October 9, 1990 as a second positive test under the previously agreed upon EAP with my union and any relapse on my part will result in my immediate termination.

21. The Investigator for the Commission's Office of Investigations who interviewed me on April 24, 1991 did not seek from me any details as to my compliance [REDACTED]

[REDACTED] and he did not seek any information from me as to my job duties and the performance thereof since my return to unescorted access. Although the Investigator did request my written authorization to obtain all of my treatment records from [REDACTED] I refused as too broad a request. He did not seek my permission for the [REDACTED]

[REDACTED] and I, frankly, did not think to make such an offer to him. The Commission's Investigator, to the best of my knowledge, did not seek to speak with any of my past or present supervisors as to my performance or conduct on the job. The Commission has never sought to have me evaluated by its own representative and, to the best of my knowledge, the Investigator was not a licensed professional qualified to make such an evaluation.

The Investigator's interview of me only lasted a few hours and, I believe that his total time at the FitzPatrick Facility to conduct his inquiry was less than twenty-four (24) hours.

22. The suspension and proposed revocation of my License is not appropriate as I have successfully completed my treatment program, have been rehabilitated and continue to be trustworthy. The Power Authority has engaged in a carefully phased program of my working in a non-operator capacity observation and monitoring my rehabilitation to ensure that my return to status as a Senior Reactor Operator is appropriate and without any threat to the safety of the facility, other employees or myself.

23. Since my treatment and more fully understanding [REDACTED] I have been forthright and candid in addressing it and acknowledging it to others. This is, in part, reflected in my full and complete disclosures to the Investigator from the Commission, Mr. Jerry Cullings, on April 24, 1991, of my past conduct which now make up part of the concerns of the Commission as set forth in the Order.

24. I reasonably believe that the suspension and proposed revocation of my License may violate the prohibitions found in Federal Law and the Code of Federal Rules and Regulations in that the Commission is unlawfully discriminating against me in its licensing of me predicated on my [REDACTED]

25. I respectfully request that, if the Presiding Officer does not set aside my suspension and deny the revocation of my License on these answering papers, that a hearing be held in this matter and that an oral presentation be made to create an

adequate record by enabling the Presiding Officer to judge my credibility in person and that of all other parties to this matter.

26. I respectfully request that the suspension of my License as a Senior Reactor Operator be set aside and my License not be revoked as good cause exists why such should not occur as set forth herein and as may be otherwise set forth in the other answering documents submitted herewith.

DAVID M. MANNING

Sworn to before me this
_____ day of June, 1951

Notary Public

adequate record by enabling the Presiding Officer to judge my credibility in person and that of all other parties to this matter.

26. I respectfully request that the suspension of my License as a Senior Reactor Operator be set aside and my License not be revoked as good cause exists why such should not occur as set forth herein and as may be otherwise set forth in the other answering documents submitted herewith.

/s/ David M. Manning
DAVID M. MANNING

Sworn to before me this

6th day of June, 1991

J. JEFFREY GIBSON
Notary Public in the State of New York
City and County of Orange County No. ABC12345
My Comm. expires on June 30, 1992
Notary Public

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
DAVID M. MANNING,)
)
Senior Reactor Operator.)
_____)

AFFIDAVIT

Docket No. 55-8615
License No. SOP-10561-1
Enforcement Action
No. 91-054

STATE OF NEW YORK) ss: *
COUNTY OF OSWEGO)

WILLIAM FERNANDEZ, II, being duly sworn, respectfully deposes and states to the United States Nuclear Regulatory Commission (Commission) that:

1. I am Resident Manager in charge of the overall operation of the James A. FitzPatrick Nuclear Plant (FitzPatrick of the New York Power Authority (the Authority) located at Scriba, New York. I have been employed by the Authority at FitzPatrick since June 1976 and, prior to my becoming Resident Manager in January of 1989, I served as the Assistant to the Maintenance Superintendent (June 1976 to April 1980), Technical Services Superintendent (April 1980 to October 1982), Maintenance Superintendent (October 1982 to January 1985), Operations Superintendent (January 1985 to August 1985) and Superintendent of Power (August 1985 to January 1989).

2. I have a Masters degree in Business Administration from Syracuse University, a Bachelor of Science degree in

Mechanical Engineering from Rensselaer Polytechnic Institute. I received an honorable discharge from the U.S. Navy as a Lieutenant Commander and Nuclear Qualified Submarine Officer.

3. I am fully familiar with the operation of the FitzPatrick Nuclear Plant and have extensive experience in working with licensed reactor operators, both in my employment with the Authority and in my experience as a naval officer. With regard to David M. Manning, Senior Reactor Operator, I indirectly supervised him when I served as Operations Superintendent.

4. I am familiar with what has occurred with Mr. Manning since October 9, 1990. My personal involvement includes, but is not limited to, personal conversations with and observations of Mr. Manning, verbal and written reports from the Employee Assistance Program (EAP) and the reports of those who have supervised Mr. Manning, both before October 9, 1990 and since his return to work on December 3, 1990. I have also had numerous consultations with the headquarters and regional staff of the Commission regarding Mr. Manning. The particular details of my involvement and what has occurred are as follows:

A. Upon Mr. Manning's refusal to provide a second urine sample on October 9, 1990, I was called to the test site. I advised Mr. Manning what would happen if he refused the test. I treated Mr. Manning's refusal as a first positive test under Part 26 and the new FitzPatrick Fitness For Duty Program. Due to a prior event in 1988, Mr. Manning was informed that the incident would be treated as a second offense against the established union-management agreement on Fitness For Duty (in effect prior to NRC Part 26 rule making). I then suspended Mr. Manning's unescorted access for a minimum of fourteen days and referred him to the EAP.

B. Also on October 9, 1990, by telephone to the NRC's event notification operations center, the NRC was made aware of what had occurred regarding Mr. Manning and my initial actions in response.

C. On or about October 10, 1990, Mr. Manning reported to the EAP which was at that time operated under contract for the Authority by Managed Health Network, Inc. (MHN).

D. On October 12, 1990 I had a telephone conference call with representatives of the Commission at both the regional and headquarters offices. I reported what had occurred and discussed Mr. Manning's employment history including an earlier positive urine test in 1988.

E. On or about October 18, 1990, I learned that Mr. Manning's evaluation had been completed and that the EAP recommended he receive inpatient treatment.

F. October 22, 1990 - Mr. Manning was admitted to the inpatient treatment facility, [REDACTED] for a month long treatment program. By correspondence, dated October 22, 1990, sent to Mr. Thomas T. Martin, Regional Administrator of the Commission, I advised the Commission of Mr. Manning's removal from licensed duties (Reference Exhibits, Exhibit Tab E).

G. October 29, 1990 - I participated in a second conference call with the regional and headquarters offices of the Commission to update them.

H. November 16, 1990 - I again spoke by conference telephone call with the headquarters and regional Commission offices about Mr. Manning. I was told that a letter would be forthcoming from the Commission officially requesting information regarding Mr. Manning and what had occurred.

I. November 21, 1990 - Mr. Manning was discharged from [REDACTED]

J. On November 26, 1990, I spoke with [REDACTED] of MHN, EAP Program Administrators about the discharge summary. I discussed those issues which should be followed-up with Mr. Manning.

[REDACTED]

L. Also on November 26, 1990, I again spoke with the Commission and reported on the meeting with Mr. Manning and what and how he was doing.

M. November 30, 1990 - I received the official discharge summary from Managed Health Network (Medical/Financial Records Exhibit Tab D).

[REDACTED]

N. [REDACTED]

O. December 3, 1990 - I had my second meeting with Mr. Manning, his union representatives and others which lasted at least an hour. I reviewed each of the recommendations with Mr. Manning, in detail, and was satisfied that he had made significant progress in addressing his problem. He understood he would be discharged if he relapsed.


[REDACTED]

I determined to put Mr. Manning back to work in a non-licensed position. He was granted unescorted access to the facility.

P. On or about December 3, 1990, in a telephone conference with representatives of the Commission, I informed them of my plan of returning Mr. Manning to non-licensed duties, observing him for three to four months and then, if appropriate, returning him to his licensed duties. The representatives of the Commission did not object to my plan or my return of Mr. Manning to unescorted access.

Q. In early December 1990, in a telephone conference call with the Commission's staff, initiated by them, I was told that the previously indicated Commission letter of inquiry would not be forthcoming and that what I was doing regarding Mr. Manning was acceptable.

R. Between December 3, 1990 and May 2, 1991, I did, on a frequent basis, speak with Mr. Manning in regards to his progress in after care and how Mr. Manning was doing generally. I also frequently met and spoke with Mr. Manning's immediate supervisor, Douglas Lindsey, Planning Superintendent, as to his work performance and conduct. My personal impressions and the reports of Mr. Lindsey were all favorable.



S. In March and April of 1991, while at the regional office of the Commission, I inquired about the proper steps to be followed to recertify Mr. Manning for operator duties. Shortly thereafter, I received a telephone call from Mr. Wayne Hodges, Director, Division of Reactor Safety within the Commission's Regional Office, concerning the reinstatement process. Conversation included some of the forms that would require submittal and the fact that the Commission desired to work in parallel with us during the process.

4. Prior to October 9, 1990, I knew Mr. Manning to be a good employee with a good record of positive accomplishment while on the job. I believed this to be exemplified by Mr. Manning's rapid licensure as a Senior Reactor Operator, his three upgrades to Assistant Shift Supervisor, and by his being selected as the operator liaison on the three person team which oversaw the creation and installation of the plant specific operations simulator. I never doubted that Mr. Manning safely and

appropriately supervised the operation of the reactor and saw fit to offer him a promotion to Assistant Shift supervisor on a full-time basis.

5. Since his return to employment, but not to operating duties, Mr. Manning has successfully performed his job assignment in the Planning Department by taking on roles of responsibility in planning, scheduling and monitoring the progress of a planned outage at the FitzPatrick Nuclear Plant. Mr. Manning worked long hours and up to six day work weeks, all while continuing his recovery program. Mr. Manning's participation in the planned outage contributed to its success.

6. I believed in October, and still do, that the false sample was symptomatic of a drug problem and not an issue of trustworthiness or ability. Mr. Manning's access authorization process was similar to other individuals with identified fitness for duty problems and was handled in accordance with the provisions of 10 CFR 26 and cite procedures. This process allowed the ability to continue to observe and evaluate Mr. Manning in his recovery from his substance abuse problem in order to be totally confident that Mr. Manning's rehabilitation progressed and that the return to his normal duties would not give rise to a relapse.

7. It is both my legal and moral obligation to run a safe and efficient plant. This includes employing personnel who are trustworthy and fit for duty. I will not permit any employee to work at FitzPatrick who I do not believe to be so qualified.

8. I believe that an otherwise qualified employee can, with the appropriate care and treatment, and his or her own strength of character, recover from a substance abuse problem. This is the rationale behind the Authority's Fitness For Duty Program, and I believe, was an assumption in the MRC rule 10 CFR, Part 26.

9. I have faithfully followed the Fitness For Duty Program, Work Activity Control Procedure of the Authority in regards to this matter (Exhibit Tab F). At his meetings on November 26 and December 3, 1990, Mr. Manning committed to me to [REDACTED] as recommended by the Employee Assistance Program and to continue to be free of all involvement with drugs as required by the procedure. The EAP has provided me with a report attesting to Mr. Manning's fitness for duty (Medical/Financial Records, Exhibit Tab D) and a satisfactory follow-up program has been established which Mr. Manning has been adhering to. I know from reports made to me that Mr. Manning has been repeatedly tested about eight times since his return to work and all have been negative.

10. In regards to Mr. Manning, the Fitness For Duty Program has successfully accomplished what it is intended to do detect drug use, evaluate the problem, treat it, establish a rehabilitation program, and return him to work.

11. I believe that Mr. Manning has and continues to make significant progress in his rehabilitation from his [REDACTED] and, at this time, have no reason to doubt that Mr. Manning's



will be successful.

12. If permitted to continue the plan of monitoring Mr. Manning's [redacted] progress, which includes continued testing for drug use, and his on-the-job performance, together with a program of training for recertification as a Senior Reactor Operator, I anticipate that Mr. Manning can be returned to normal duties as an operator.

/s/ William Fernandez, II
WILLIAM FERNANDEZ, II

Sworn to before me this

6th day of June, 1991

D. JEFFREY GOSCH

Notary Public in the State of New York
C.O. No. 11 - Orange County No. 4801640

Notary Public

4. I believe Mr. Manning to be a very intelligent individual who was able to complete the rigorous training and testing program to become a Senior Reactor Operator.

5. I further believe that Mr. Manning is, and continued to be up to his suspension, a good worker who I never recognized as under the influence of drugs or alcohol or acting inappropriately while on the job. His work was consistently good. On several occasions he was upgraded for extended periods of time to Assistant Shift Supervisor and was selected to be the only operator liaison for the factory verification and installation of the plant specific simulator for the FitzPatrick Plant.

6. On or about October 9, 1990, I learned that Mr. Manning had a drug and/or alcohol problem which he is in the process of addressing. I attended the meetings with Mr. Fernandez and others to determine how to proceed in restoring him to work and unescorted access. I believe that the course determined by William Fernandez, II, Plant Manager, to return Mr. Manning to non-licensed duties for a period of time to ensure his continued rehabilitation while doing meaningful work to be the correct one. I do not question Mr. Manning's trustworthiness. If I did, I would have so advised Mr. Fernandez and of course, objected to the restoration of his unescorted access to the facility.

7. I believe Mr. Manning to be a good employee who can continue to do good work at FitzPatrick.

~~/s/ ROGER A. LOCY~~
ROGER A. LOCY

Sworn to before me this

5th day of June, 199.

City of New York
County of New York

Notary Public

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
DAVID M. MANNING,)
Senior Reactor Operator.)
_____)

AFFIDAVIT

Docket No. 55-8615
License No. SCP-10561-1
Enforcement Action
No. 91-054

STATE OF NEW YORK) ss: *
COUNTY OF OSWEGO)

DOUGLAS J. LIMBSEY, being duly sworn, respectfully deposes and states to the United States Nuclear Regulatory Commission (Commission) that:

1. I am the Planning Superintendent for the FitzPatrick Nuclear Plant of the New York Power Authority ("the Authority") and have held that position since April, 1989. I have worked for the Authority at the FitzPatrick Nuclear Plant since August of 1977. My initial employment was as a Nuclear Operator C, and was promoted to a Senior Nuclear Operator at the end of July, 1978. I have also been a Shift Supervisor (August, 1979 to March 1, 1983), Assistant Operations Superintendent (May 1983 to August, 1985) and Operations Superintendent (August 1985 to April 1989).

2. I supervised Mr. Manning for approximately eight years as an operator and while he was assigned to the Planning Department.

3. Mr. Manning's performance as an operator was always excellent and he did more than what was expected of him. His excellent performance was recognized in his being upgraded to an Assistant Shift Supervisor for lengthy periods and by being designated to be the operator liaison for the construction and installation of the plant specific operations simulator for the FitzPatrick Nuclear Plant. I feel that one of the principle reasons that the simulator is as excellent as it is was due to Mr. Manning's involvement.

4. I welcomed the opportunity to have Mr. Manning assigned to the Planning Department as part of the Resident Manager's phased plan to monitor his work performance and progress in rehabilitation, as well as to benefit by his experience in my department. I had no reservations about Mr. Manning working for me with his unescorted access restored. I never noticed any lapses in his performance. I never recognized him as under the influence of any drugs or alcohol while on the job.

5. Mr. Manning was intimately involved in the planning, scheduling and monitoring of the March 1991 maintenance outage. He worked many twelve-hour days and long work weeks, and he had a significant contribution to the overall success of the outage.

6. I was with Mr. Manning for extended periods on an almost daily basis between December 3, 1990 and May 2, 1991.

Despite the Pressures of the hard work, I felt there was no ground lost in Mr. Manning's rehabilitation while in Planning. would welcome his return there.

DOUGLAS J. LINDSEY

Sworn to before me this

_____ day of June, 1991

Notary Public

Despite the Pressures of the hard work, I felt there was no ground lost in Mr. Manning's rehabilitation while in Planning. would welcome his return there.

/s/ Douglas J. Lindsey
DOUGLAS J. LINDSEY

Sworn to before me this

6th day of June, 1991

D. JEFFREY GINSCH

Notary Public in the State of New York
Qualified in Orangeburg County No. 4521 1991

~~My Commission Expires August 30, 1992~~
Notary Public

3. Mr. Manning began his employment with the Power Authority in January of 1981 as an Auxiliary Operator A. He earned a Reactor Operator's license in December of 1982. He earned a Senior Reactor Operator's license in September of 1986.

4. Since January 1987, Mr. Manning has been upgraded from the bargaining unit position of Senior Nuclear Operator to the management position of Assistant Shift Supervisor, on three occasions, for lengthy periods of time as follows:

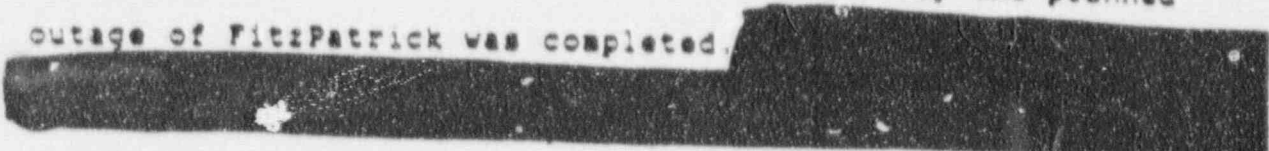
A. January 9, 1987 to April 25, 1987	(106 day
B. September 21, 1988 to February 25, 1989	(157 day
C. January 14, 1990 to October 9, 1990	<u>(267 day</u>
TOTAL	530 day

The last upgrade was actually carried on the records of the Power Authority to December 3, 1990 but his duties as such actually ended on October 9, 1990, when Mr. Manning was treated as having a positive urine test for illegal drugs and had his unescorted access to the facility suspended.

5. Mr. Manning had never been subject to any disciplinary action by the Power Authority prior to October 9, 1990.

6. Since his return to unescorted access on December 3, 1990, Mr. Manning has been subject to random testing as well as increased follow-up testing which I have been informed has occurred eight (8) times (December 10 & 27, 1990, January 2, 1991, February 22, March 28 and June 3, 1991) and that such tests have been negative.

7. In the period from December 3, 1990 to the suspension of his License on May 2, 1991, I have been advised by the FitzPatrick Accounting Department that Mr. Manning worked two hundred twelve and one-half (212.5) hours of overtime, most of which occurred prior to March 18, 1991, the day the planned outage of FitzPatrick was completed.



PATRICK FRAWLEY

Sworn to before me this
____ day of June, 1991

Notary Public

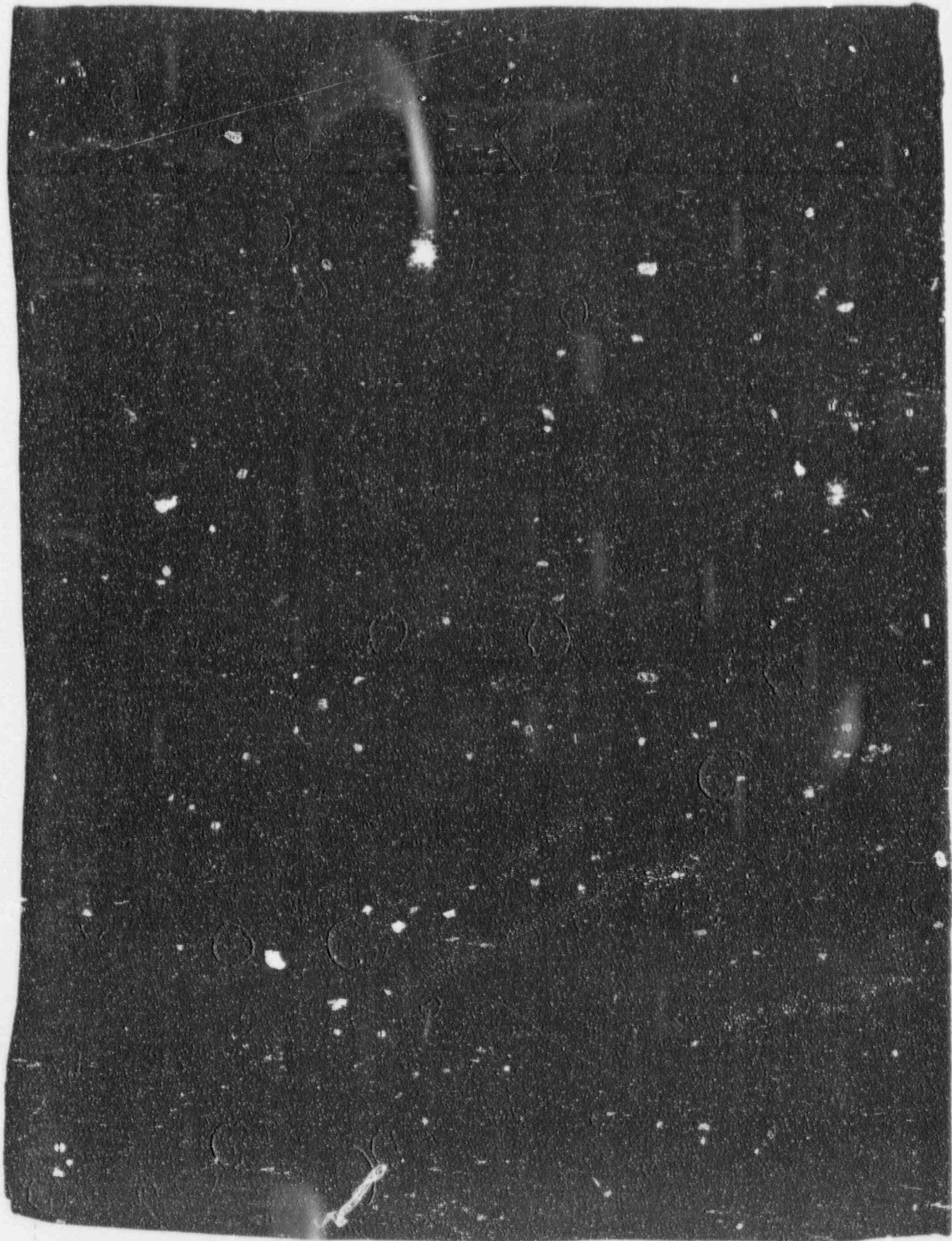
7. In the period from December 3, 1990 to the suspension of his License on May 2, 1991, I have been advised by the FitzPatrick Accounting Department that Mr. Manning worked two hundred twelve and one-half (212.5) hours of overtime, most of which occurred prior to March 18, 1991, the day the planned outage of FitzPatrick was completed.

/s/ Patrick Frawley
PATRICK FRAWLEY

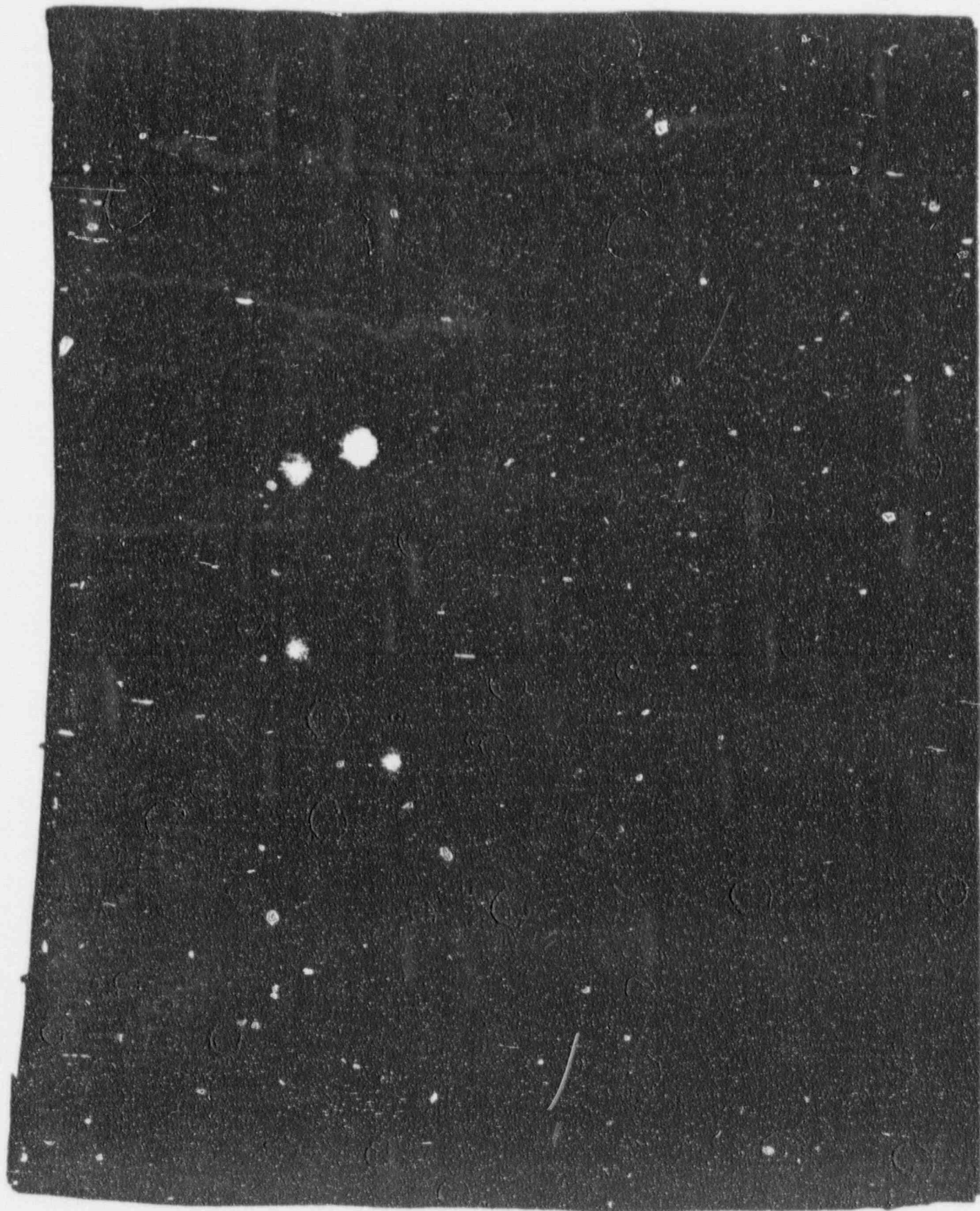
Sworn to before me this

6th day of June, 1991

D. JEFFREY GINSCH
Notary Public in the State of New York
Qualified in Onondaga County No. 4831460
~~My Commission Expires August 30, 1992~~
Notary Public



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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
DAVID M. MANNING,)
Senior Reactor Operator.)
_____)

Docket No. 55-8615
License No. SOP-1056-1
Enforcement Action
No. 91-054

AFFIDAVIT IN SUPPORT OF
DAVID M. MANNING'S APPLICATION
TO HAVE CERTAIN RECORDS
WITHHELD FROM PUBLIC DISCLOSURE

STATE OF NEW YORK) ss:
COUNTY OF OSWEGO)

DAVID M. MANNING, being duly sworn, respectfully deposes and states to the United States Nuclear Regulatory Commission (Commission) that:

1. I am the subject of the above captioned proceeding which has suspended my license as a Senior Reactor Operator and seeks its revocation for grounds related to [REDACTED]

2. I have answered the "Order Suspending License (Effective Immediately) and Order To Show Cause Why License Should Not Be Revoked" (Order) of the Commission which initiated this matter. In doing so, and wanting the Commission to have full and complete information in regards to this matter, I spoke candidly about many things which are normally considered confidential and have provided records pertinent thereto. This

includes personnel matters and matters related to my personal medical history and finances which have been held in confidence by me except for limited disclosure to my employer and/or my attorney. held in confidence, have been transmitted in confidence to the Commission and are not publicly available from any other source.

3. The public disclosure of the answering papers and bound exhibits in this matter serve no legitimate public purpose and would constitute a clearly unwarranted invasion of my personal privacy.

4. Subsections (4) and (6) of section 2.790 of 10 CFR provide for such information to be exempt from public disclosure and I respectfully request that such exemption be granted as requested herein.

DAVID M. MANNING

Sworn to before me this

____ day of June, 1961

Notary Public

includes personnel matters and matters related to my personal medical history and finances which have been held in confidence by me except for limited disclosure to my employer and/or my attorney, held in confidence, have been transmitted in confidence to the Commission and are not publicly available from any other source.

3. The public disclosure of the answering papers and bound exhibits in this matter serve no legitimate public purpose and would constitute a clearly unwarranted invasion of my personal privacy.

4. Subsections (4) and (6) of section 2.790 of 10 CFR provide for such information to be exempt from public disclosure and I respectfully request that such exemption be granted as requested herein.

/s/ David M. Manning
DAVID M. MANNING

Sworn to before me this

6th day of June, 1991

B. JEFFREY GRON
Notary Public in the State of New York
Qualified in Orange County No. 4021640
~~Notary Public~~
Notary Public