

*NRC Evaluation*

As noted in Section IV of the Policy, the examples in the supplements are neither exhaustive nor controlling. The NRC noted in the letter proposing the civil penalty that each of the violations that formed the basis for the civil penalty could have been classified as Severity Level III (Supplement VI, C.8) and, therefore, could have been assessed separate penalties. Factoring in the significance of the violations, their relationship to a single event, and the involved willfulness on the part of the radiographer with respect to at least one of the violations, the NRC utilized its discretion to consider the violations collectively and to treat them at the next highest severity level, Severity Level II.

3. DHT argued that compliance was achieved in a major portion of all three of the regulations, substantiating that the radiographer had knowledge of the requirements and was not operating under a total disregard for the safety requirements, but rather under a potentially significant lack of attention or carelessness toward licensed activities. In addition, DHT contends that the violations appear to fit the criteria in Section VII.B.1.(d)(iii) for enforcement discretion because the violations appeared to be an isolated act of an employee without management involvement.

*NRC Evaluation*

The NRC agrees with DHT's views concerning the radiographer's conduct. However, the Licensee's argument is not applicable with regard to mitigation of the civil penalty. As to DHT's contention that the violations appear to fit the criteria in Section VII.B.1.(d)(iii), the NRC disagrees with the Licensee because Section VII.B.1.(d)(iii) concerns licensee-identified Severity Level IV violations, not Severity Level II violations. Moreover, a radiographer, for purpose of the Enforcement Policy, is not a "low-level individual." Therefore, enforcement discretion based on Section VII.B.1. does not apply to this case.

4. DHT cited several corrective actions which went beyond those described at the predecisional enforcement conference and therefore were not considered in the decision to propose a civil penalty. The additional corrective actions cited by DHT included 40-hour (versus 8-hour) refresher training for all radiography personnel who have been with the company for more than 1 year and are due for annual refresher training.

*NRC Evaluation*

These corrective actions were taken by the Licensee after the conference and were not factored into the decision-making process. Although the NRC gave the Licensee credit for its corrective actions in determining the proposed civil penalty amount, the NRC considers these additional corrective actions noteworthy because they go beyond what most small radiography licensees commit to and are somewhat beyond our expectations, given the circumstances of this case. Therefore, the NRC believes that discretion should be utilized to mitigate the proposed civil penalty by \$3,000.

*NRC Conclusion*

The NRC has considered all of the arguments the Licensee made and concluded that the violations occurred as stated in the original Notice and that they were appropriately classified as a Severity Level II problem. However, given the extensive corrective actions committed to by this Licensee, particularly the additional training of its radiography personnel, the NRC has determined that a basis exists for exercising discretion to reduce the proposed penalty by \$3,000. Consequently, a civil penalty in the amount of \$5,000 should be imposed.

**EVALUATION OF VIOLATIONS NOT ASSESSED A CIVIL PENALTY**

Of the violations not assessed a civil penalty, Diamond H Testing Company (DHT or Licensee) neither admitted nor denied Violations II.A and Violation II.B. However, the Licensee again argued that the violations were the result of independent actions by its radiographer. In addition, the Licensee questioned the validity of citing 10 CFR 20.1801 with regard to Violation II.B.

*Restatement of Violation II.B*

B. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, during an 8 to 10 minute period between approximately 9:45 p.m. and 10:00 p.m. on June 14, 1995, the licensee did not secure from unauthorized removal or limit access to a 48.2 curie iridium-192 sealed source in a Gamma Century exposure device located on the 9th floor of the Hawaiian Electric Company Kahe Unit 5 Power Plant, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. (03014)

This is a Severity Level IV violation (Supplement IV).

*Summary of Licensee's Response to Violation II.B*

The Licensee questioned the validity of including 10 CFR 20.1801 as applying to the circumstances in question. The Licensee stated that "It [the exposure device] had been left for a period of 8 to 10 minutes when the radiographer went to notify the RSO [radiation safety officer] of the situation." DHT's position is that 10 CFR 20.1801, which was cited in conjunction with 10 CFR 20.1802, should not apply because the radiography camera was not "stored" at the field site location.

*NRC Evaluation of Licensee's Response*

The Licensee admits that the camera was left in an unrestricted area and neither secured the material from unauthorized removal nor maintained constant surveillance of the licensed material. Therefore, while the NRC agrees with DHT

that 10 CFR 20.1801 may not have applied, the NRC concludes that Licensee failed to comply with these requirements.

*NRC Conclusion*

Based on the above, the NRC concludes that the licensee has not provided an adequate basis for withdrawal of the Violation II.B. Therefore, the Violation II.B occurred as stated in the Notice.

[FR Doc. 96-5993 Filed 3-12-96; 8:45 am]

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**[Docket No. 50-482]**

**Wolf Creek Nuclear Operating Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Nuclear Generating Station located in Coffey County, Kansas.

The proposed amendment would revise Technical Specification Figure 2.1-1, "Reactor Core Safety Limit—Four Loops in Operation," Table 2.2-1, "Reactor Trip System Instrumentation Setpoints," and Table 3.2-1, "DNB Parameters," to allow operation of the Wolf Creek Nuclear Generating Station (WCGS) with decreased indicated reactor coolant system (RCS) flow.

The requested change is required to allow WCGS to operate at full rated power following restart after the eighth refueling outage should the indicated flow be below the current minimum measured flow.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence and the consequences of an event evaluated previously in the Updated Safety Analysis Report (USAR) are not increased due to the proposed technical specification changes. The technical specification changes being requested are to reflect revised core design parameters affected by the Cycle 9 core reload geometry, and instrumentation setpoint changes needed to ensure accurate measurement of reactor thermal power in order to allow the unit to operate at rated thermal power during Cycle 9. Each USAR Chapter 15 event was evaluated to determine the impact of the reduction in thermal design flow. The events in which the margin to the acceptance criteria was decreased were reanalyzed to support the 3.5% flow reduction. Generally, the RCS heat-up events fall into this category as the reduction in RCS flow results in decreased heat removal capacity. Evaluations of these events were performed using bounding core state parameters based on the previous Safety Analysis submitted in support of the WCGS Power Rerate Program, approved in WCGS Technical Specification Amendment 69. Results of the analyses and evaluations performed for the reduction in thermal design flow for Cycle 9 indicate that all acceptance criteria for USAR Chapter 15 events continue to be met.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested changes do not create the possibility of a new or different kind of event or malfunction from any previously evaluated. The proposed changes do not change the method and manner of plant operation, nor is any new equipment being installed. Neither the proposed reduction in thermal design flow nor the increase in the Low Pressurizer Pressure Trip setpoint will create the possibility of an event of a different type than previously evaluated in the USAR.

The proposed Technical Specification changes are bounded by the current conditions with respect to system dynamic loading, environmental equipment qualification, and rejection of heat to the Ultimate Heat Sink. These analyses are bounded by the current analyses due to the conclusion that the mass and energy releases will not be impacted by the proposed change. This conclusion is also based on the fact that the current operating conditions bound the proposed operating conditions with respect to the secondary system operating parameters.

3. The proposed change does not involve a significant reduction in a margin of safety.

In general, the Low Pressurizer Pressure Trip setpoint is chosen at a conservatively

low value (1885 psig) for the safety analyses. The safety margin (to prevent DNB) is provided by setting the Technical Specification limit for the Low Pressurizer Pressure Trip setpoint at its current value of 1915 psig. Increasing this reactor trip setpoint 25 psi (from 1915 psig to 1940 psig) would result in a net benefit to all analyses which assume its use, as well as of setting a potential reduction in the margin of safety for this parameter, caused by the reduction in TDF. Therefore, the current Safety Analysis Limit of 1885 psig will continue to be used in the WCGS event analyses.

The proposed changes do not change the plant configuration in a way that introduces a new potential hazard to the plant and do not involve a significant reduction in the margin of safety. The analyses and evaluations discussed in the safety evaluation demonstrate that all applicable design criteria continue to be met for the changes. Therefore, it is concluded that the margin of safety, as described in the bases to any technical specification, is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to

Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 12, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and the Washburn University School of Law Library, Topeka, Kansas 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective,

notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Bateman, Director, Project Directorate IV-2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 8, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms, located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and the Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 11th day of March 1996.

For the Nuclear Regulatory Commission  
James C. Stone,

*Senior Project Manager, Project Directorate IV-2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

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[Docket No. 40-3453]

#### Atlas Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Extension of comment period.

**SUMMARY:** On January 30, 1996, the U.S. Nuclear Regulatory Commission (NRC) published a notice of availability of a Draft Environmental Impact Statement and a Draft Technical Evaluation Report regarding the proposed reclamation by Atlas Corporation of an existing uranium mill tailings pile near Moab, Utah. The comment period for these documents was 60 days from the date of the notice. The NRC has received requests to extend the comment period, based on the complexity of the documents and delays in their receipt. After review, the NRC has determined that it would be appropriate to extend the comment period 30 days. Therefore, the comment period will be extended to April 29, 1996. Comments received after that date will be considered to the extent practical. Comments on either document should be sent to Chief, Uranium Recovery Branch, Mail Stop TWFN 7-J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Dr. Myron Fliegel, Uranium Recovery Branch, Mail Stop TWFN 7-J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-6629.

Dated at Rockville, Maryland, this 7th day of March 1996.

For the U.S. Nuclear Regulatory Commission.

Joseph J. Holonich,

*Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

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