

Dr. Richard F. Cole, Special Assistant,
Atomic Safety and Licensing Board
Panel, U.S. Nuclear Regulatory
Commission, Washington, D.C. 20555

Issued at Rockville, Maryland, this 16th
day of June 1998.

B. Paul Cotter, Jr.,

*Chief Administrative Judge, Atomic Safety
and Licensing Board Panel.*

[FR Doc. 98-16639 Filed 6-22-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-315]

Indiana Michigan Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory
Commission (the Commission) has
granted the request of Indiana Michigan
Power Company (the licensee) to
withdraw its August 4, 1995,
application for proposed amendment to
Facility Operating License No. DPR-58,
for the Donald C. Cook Nuclear Plant,
Unit Nos. 1, located in Berrien County,
Michigan.

The proposed amendment would
have revised the technical specifications
to allow for repair of hybrid expansion
joint sleeved steam generator tubes.

The Commission had previously
issued a Notice of Consideration of
Issuance of Amendment published in
the **Federal Register** on January 29,
1997 (62 FR 4351). However, by letter
dated January 6, 1998, the licensee
withdrew the proposed change.

For further details with respect to this
action, see the application for
amendment dated August 4, 1995, and
the licensee's letter dated January 6,
1998, which withdrew the application
for license amendment. The above
documents are 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 room
located at the Maud Preston Palenske
Memorial Library, 500 Market Street, St.
Joseph, MI 49085.

Dated at Rockville, Maryland, this 15th day
of June 1998.

For the Nuclear Regulatory Commission.

John F. Stang,

*Senior Project Manager, Project Directorate
III-3, Division of Reactor Projects—III/IV,
Office of Nuclear Reactor Regulation.*

[FR Doc. 98-16650 Filed 6-22-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-315 and 50-316]

Indiana Michigan Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory
Commission (the Commission) has
granted the request of Indiana Michigan
Power Company (the licensee) to
withdraw its November 16, 1994
application for proposed amendment to
Facility Operating License Nos. DPR-58
and DPR-74, for the Donald C. Cook
Nuclear Plant, Unit Nos. 1 and 2,
located in Berrien County, Michigan.

The proposed amendment would
have revised the technical specifications
to reduce the decay time required before
refueling operations could begin.

The Commission had previously
issued a Notice of Consideration of
Issuance of Amendment published in
the **Federal Register** on December 21,
1994 (59 FR 65816). However, by letter
dated January 27, 1998, the licensee
withdrew the proposed change.

For further details with respect to this
action, see the application for
amendment dated November 16, 1994,
and the licensee's letter dated January
27, 1998, which withdrew the
application for license amendment. The
above documents are 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 room located at the Maud
Preston Palenske Memorial Library, 500
Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 15th day
of June 1998.

For the Nuclear Regulatory Commission.

John F. Stang,

*Senior Project Manager, Project Directorate
III-3, Division of Reactor Projects—III/IV,
Office of Nuclear Reactor Regulation.*

[FR Doc. 98-16651 Filed 6-22-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 030-31174, License No. 07-
28386-01, EA NO. 98-061]

Koch Engineering Company, Inc., Newark, Delaware; Order Imposing a Civil Monetary Penalty

I

Koch Engineering Company, Inc.
(Licensee) is the holder of Byproduct
Materials License No. 07-28386-01

(License) issued by the Nuclear
Regulatory Commission (NRC or
Commission) on July 24, 1989, and most
recently renewed by the NRC on August
28, 1995. The License authorizes the
Licensee to possess and use certain
byproduct materials in accordance with
the conditions specified therein at its
facilities in Newark, Delaware, Canton,
Michigan, and temporary job sites
anywhere in the United States where
the U.S. Nuclear Regulatory
Commission maintains jurisdiction.

II

A special inspection of the Licensee's
activities was conducted on September
15, 1997, to review the circumstances
associated with an event involving the
shipment of a package of radioactive
material (3 cesium-137 sources) via
Federal Express from the Licensee's
facility in Newark, Delaware to
Wilmington, North Carolina. The
package was empty upon arrival in
North Carolina, and the sources were
later found at a Federal Express facility
in Memphis, Tennessee. The NRC
inspection was continued in the Region
I office on January 20, 1998, to review
evaluations of doses received by Federal
Express workers as a result of the event.
The results of this inspection indicated
that the Licensee had not conducted its
activities in full compliance with NRC
requirements. A written Notice of
Violation and Proposed Imposition of
Civil Penalty (Notice) was served upon
the Licensee by letter dated March 13,
1998. The Notice states the nature of the
violations, the provisions of the NRC
requirements that the Licensee violated,
and the amount of the civil penalty
proposed for the violation.

The Licensee responded to the Notice
in letters, dated April 8 and 9, 1998. In
its responses, the Licensee admits the
violations, but disputes the Severity
Level of the violation that resulted in
the issuance of the civil penalty and
requests that the proposed penalty of
\$4,400 be reconsidered.

III

After consideration of the Licensee's
response and the statements of fact,
explanation, and argument contained
therein, the NRC staff has determined,
as set forth in the Appendix to this
Order, that the Licensee has not
provided an adequate basis for reducing
the Severity Level of the violation or for
withdrawal of the civil penalty
associated with this violation.
Therefore, a civil penalty in the amount
of \$4,400 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of \$4,400 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Deputy Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

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

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

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, MD, this 12th day of June 1998.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Acting Deputy Executive Director for Regulatory Effectiveness.

Appendix—Evaluations and Conclusion

On March 13, 1998, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Koch Engineering Company, Inc. (Licensee) for violations identified during NRC review of the circumstances associated with an event involving the shipment of a package containing 3 cesium-137 sources from the Licensee's facility in Newark, Delaware to Wilmington, North Carolina. The package was empty upon arrival in North Carolina, and the sources were later found at a Federal Express facility in Memphis, Tennessee. The Licensee responded to the Notice in letters, dated April 8 and 9, 1998. In its responses, the Licensee admits the violations, but disputes the Severity Level of the violation for which a civil penalty was assessed and requests the NRC reconsider the proposed civil penalty of \$4,400. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of the Violation

10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 173.475 requires, in part, that before each shipment of any radioactive materials package, the offeror must ensure, by examination or appropriate tests, that each closure device of the packaging, including any required gasket, is properly installed, secured, and free of defects.

Contrary to the above, prior to September 15, 1997, the licensee had failed to ensure, by examination or test, that each closure device was properly installed, secured, and free of defects before each shipment of packages containing radioactive material. Specifically, the licensee did not ensure that the Master Lock No. 175 padlock attached to the packages were examined or tested in that the individual responsible for installing the padlock did not pull on the lock after it was closed to ensure that it was secure.

This is a Severity Level II violation (Supplement VI). Civil Penalty—\$4,400

Summary of the Licensee's Response

The Licensee admits the violation, but contends that the criteria used to classify the violation at Severity Level II are not applicable, because it believes that it is possible that the loss of control of radioactive material could have resulted from inappropriate handling by the carrier (Federal Express) and that the violation did not result in a clear potential for a member of the public to receive more than 100 mrem to the whole body.

The Licensee agrees that the violation may have been the probable cause for the "loss of control of radioactive material via a breach in the package's integrity," but it believes that the inappropriate handling by the carrier's hazmat personnel may have also been a contributing factor. The Licensee contends that the package was offered to the carrier with the lock and two electrical tie wraps installed and that inappropriate handling by the carrier, such as a substantial drop from a height of greater than 4 feet, may have resulted in the initial lock failure and subsequent loss of the three sealed sources from the container. Additionally, the Licensee contends that the carrier's hazmat employee, who first noticed the opened empty container, did not follow proper procedures when he/she placed the lid back on the container and allowed the container to proceed, rather than immediately reporting the incident to his/her supervisor.

Based on the regulatory criteria specified in 49 CFR, the Licensee contends that regulations required that its package should have only been in the care of individuals classified as "hazmat employees" during all stages of the shipping process. The Licensee also states that the regulations require that hazmat employees be trained concerning "methods and procedures for avoiding accidents, such as the proper procedures for handling packages of hazardous material." Therefore, the Licensee contends that, while the carrier is not regulated by the NRC, the carrier's actions should be considered when determining accountability.

The Licensee also contends that the violation did not result in a "clear potential for a member of the public to receive more than 100 mrem to the whole body," noting that the regulations required that their radioactive material shipment only be handled by trained hazmat employees. The Licensee contends that the carrier's hazmat employees are not considered members of the public while performing hazmat duties because they receive

"occupational dose." Additionally, the Licensee notes that the incident occurred at the end of the film badge reporting period and there is no supportive evidence that all of the 90 mrem received by the worker was the direct result of the incident. Therefore, the Licensee maintains that there was no clear potential for a member of the public to receive more than 100 mrem to the whole body.

Finally, the Licensee notes that while the NRC's March 13, 1998 Notice stated that the Licensee's corrective actions were prompt and comprehensive, it was not clear whether credit for such actions was considered in assessing the amount of the civil penalty.

NRC's Evaluation of the Licensee's Response

The NRC does not dispute the Licensee's contention that inappropriate handling by the carrier's hazmat personnel may have contributed to the loss of control of radioactive material. At a minimum, proper action when the lid was found unattached could have minimized the amount of time that the radioactive material was uncontrolled. However, the carrier's actions do not relieve the Licensee of its responsibility to ensure that each closure device on the radioactive materials package is properly installed and secure. Regardless of events that occurred after the package left the Licensee's control, the Licensee's failure to assure that the hasp on the lock was secure prior to shipment was the most probable cause of the loss of control of the radioactive material, and is considered a significant violation of NRC requirements.

In addition, the NRC does not dispute the Licensee's position that hazmat employees are not considered members of the public. However, the NRC disagrees that there was no clear potential for a member of the public to receive more than 100 mrem to the whole body as a result of the Licensee's failure to ensure that the lock on the package containing the sealed sources was properly installed and secure. The sources could have been lost at any time during the shipping process, such as on the aircraft or in the vehicle that were used to transport the package, and so the clear possibility existed that members of the public could have come in contact with the sources. Considering the configuration of the sources (the sealed sources were contained in approximately 4 inch long bolts) and the quantity of radioactive material in the package (the 3 sources contained 1, 18, and 100 millicuries of cesium-137 respectively), the NRC continues to conclude that there was a clear potential

for a member of the public to unknowingly come in contact with the sources and receive an exposure greater than 100 mrem to the whole body.

Example B.1 of Supplement V of the NRC's Enforcement Policy provides that a "[f]ailure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem [100 mrem] to the whole body" be considered as a Severity Level II violation. Therefore, the NRC maintains that the violation was appropriately classified at Severity Level II.

With regard to the Licensee's argument concerning its corrective actions, as stated in our March 13, 1998 letter, credit was warranted for your corrective actions in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Had the Licensee not taken prompt and comprehensive corrective actions, a civil penalty of \$8,800 (twice the base amount) would have been proposed.

NRC Conclusion

The NRC has concluded that the Licensee did not provide a basis for reducing the Severity Level of the violation nor for reducing or withdrawing the civil penalty. Accordingly, a civil penalty in the amount of \$4,400 should be issued.

[FR Doc. 98-16645 Filed 6-22-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-443-LA ASLBP No. 98-746-05-LA]

North Atlantic Energy Service Corporation; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

North Atlantic Energy Service Corporation Seabrook Station Unit No. 1

This Board is being established pursuant to the request for hearing submitted by Robert A. Backus on behalf of the Seacoast Anti-Pollution League. The petition opposes the

issuance of a license amendment to North Atlantic Energy Service Corporation for Seabrook Station Unit No. 1 that would revise Technical Specifications on the frequency of steam generator inspections to accommodate a 24 month fuel cycle. A notice of the proposed amendment was published in the **Federal Register** at 63 FR 25101, 25113 (May 6, 1998).

The Board is comprised of the following administrative judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
Linda W. Little, 5000 Hermitage Drive, Raleigh, NC 27612

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 C.F.R. § 2.701.

Issued at Rockville, Maryland, this 16th day of June 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98-16638 Filed 6-22-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-388]

Pennsylvania Power and Light Company; 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-22 issued to Pennsylvania Power and Light Company for operation of the Susquehanna Steam Electric Station (SSES), Unit 2 located in Luzerne County, Pennsylvania.

The proposed amendment would amend the Susquehanna Steam Electric Station's Technical Specifications (TSs) to add notations to TSs 3.3.7.5, 3.4.2, and 4.4.2 that the acoustic monitor for safety relief valve (SRV) "J" may be inoperable beginning June 15, 1998, until the next unit shutdown of sufficient duration to allow for containment entry, not to exceed the ninth refueling and inspection outage (spring 1999).