

October 7, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONDOCKETED
USNRCBefore the Atomic Safety and Licensing Board

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In the Matter of

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, Et Al.(Perry Nuclear Power Plant,
Units 1 and 2)Docket Nos. OFFICE OF SECRETARY
50-50-440
502442-
(Operating License)OCRE REPLY TO APPLICANT AND STAFF AFFIDAVITS CONCERNING
THE MOTION TO REOPEN THE QA RECORD

Ohio Citizens for Responsible Energy ("OCRE") hereby replies to Staff and Applicant affidavits filed pursuant to the Licensing Board's August 18, 1983 Memorandum and Order (Motion to Reopen), LBP-83-52.

Applicants include in their reply an attack on the Board's action in that Order, claiming that the Board's sua sponte action has sanctioned OCRE's "tardy approach to discovery." OCRE, while agreeing with the Board's action, takes issue with its reasoning in its denial of OCRE's motion.

The Board claims that the FOIA request could have been filed much earlier. The fact is that OCRE did make such a request months earlier, in November 1982, and the Comstock and QAAC documents were not released (or even identified) in response, most likely because the documents were not yet in the Staff's files.

The Board also claims that more diligent discovery from Applicants would have uncovered the Comstock concerns. This again is inaccurate. The Board seems to forget that formal discovery closed almost three months before it identified CEI's control

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over Comstock as an issue to be litigated. The 81-19 investigation report was issued concurrently with the close of discovery. The first mention of the L.K. Comstock task force was made in the 83-06 report, which the Board itself found "cryptic and unsatisfactory." It thus seems that the Board would have intervenors seek through discovery documents which they had no reason to believe even existed. It is, of course, possible that the documents could have been discovered if OCRE had at least \$100,000 to spend on copies of every QA-related document ever written at Perry, and 100 full-time researchers to look through the mountain of paper. Needless to say, OCRE does not possess such resources.

OCRE further believes that the Board placed an unrealistic burden on OCRE in requiring it to explain what a then-unknown writer meant by his comments on the adequacy of the quarterly reports. LBP-83-52 at 11. The Board also apparently misunderstood OCRE's citation of Article 318 of the National Electrical Code. OCRE did not argue, as the Board claims (LBP-83-52 at 10-11), that cable tray overfill violated that code; rather, OCRE used the code as an example illustrating how overfill could cause safety-related problems.

With the exception of these items, OCRE agrees with the Board's Order; reopening the record is the proper action to be taken in these circumstances. ^{1/}

^{1/} Contrary to Staff and Applicant assertions, the Board's action is sanctioned by precedent. See, e.g., Carolina Power and Light (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83, 85 (1978) (reopening the record may be proper even though

The affidavits submitted by both Staff and Applicants de-emphasize the significance of the inspection certification and QAAC questions. This attitude, especially concerning the former, seems anomalous in comparison with a recent NRC order imposing a civil monetary penalty on the Niagara Mohawk Power Company (48 Fed. Reg. 40581, September 8, 1983, attached) for a violation involving the use of uncertified inspectors (although that situation also involved the falsification of inspection documents, which does not appear to be the case at Perry). Both Staff and Applicant imply that the final inspection at system turnover will ensure plant safety. This attitude is not sanctioned by the Commission. See Order Imposing a Civil Monetary Penalty on Consumers Power Co. (48 Fed. Reg. 40579, September 8, 1983): "the philosophy of inspection quality into the job cannot be accepted as a substitute for the philosophy of building quality into the job."

Other than the limited comments above, OCRE has no reply to Applicant and Staff affidavits. OCRE has no further evidence to present concerning the issues. The Board will have to take the word of Applicants, who have a \$5.2 billion interest to protect, and Staff, which for less obvious reasons, usually sides with Applicants to an extent that it would not be far-fetched to say they are acting in tandem. OCRE believes that this leaves the Perry facility in a state of indeterminate safety.

1/ continued. the evidence to be received might not be so significant as to alter the original findings or conclusions, when the new evidence can be received with little or no burden on the parties. To otherwise exclude evidence because the Board's (next page)

The very circumstances of the reopening of the record illustrate this. The Board found that the witnesses, who were sworn to tell the whole truth (Tr. 1027), in fact neglected to mention the certification of Comstock inspectors or the meeting frequency of the QAAC. The Board even stated that the Staff's testimony seemed "artfully drafted to conceal" the latter problem. These circumstances corroborate the observation of a participant in the British nuclear licensing process, that "you can expect a scientist to tell the truth, and nothing but the truth, but not the whole truth."^{2/} The unfortunate fact is that witnesses will not reveal the whole truth unless it is pried out of them through cross-examination, and the resources with which to accomplish this are generally beyond citizen intervenors.

For this reason, OCRE agrees with Staff and Applicants that a further hearing should not be held on the matter. The purpose of a hearing is to elicit the truth and to provide due process for all parties. Under the present circumstances, it could do neither. The Supreme Court has said that due process must occur in a meaningful time and a meaningful manner. Armstrong v. Manzo,

^{1/} continued. conclusions may be unchanged would not always satisfy the requirement that a record suitable for review be preserved (10 CFR 2.756). The Appeal Board has found that sua sponte reopening is required when a Board learns, from any source, of a significant safety issue. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358 (1973). Reopening may also be appropriate when newly discovered evidence tends to show that testimony in the record was false. Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3; Perry Nuclear Power Plant, Units 1 and 2), ALAB-430, 6 NRC 457 (1977).

^{2/} From "Nuclear Energy: How the Odds are Stacked Against Its Opponents", Nature, Vol. 277, 22 Feb. 1979, 594-5.

380 US 545, 85 Sct 1187, 1191 (1965); Goldberg v. Kelly, 397 US 254, 90 Sct 1011, 1020 (1970). Without the resources to effectively present a case ("meaningful manner"), OCRE finds that it will not have due process. Such a hearing would not even rise to the level of CEI's word against intervenors'; it would be CEI's against no one's, an obviously unsatisfactory arrangement when the Appeal Board has held that, '10 CFR 2.732 notwithstanding, intervenors must essentially prove that safe plant operation will be compromised by QA deficiencies. Union Electric Co. (Callaway Plant, Unit 1), ALAB-740 (cited by Applicants). Unless and until Congress and the Commission see fit to fund citizen intervenors, or Perry workers choose to risk their careers and perhaps their lives to make the truth known, OCRE sees no point in holding a QA hearing, which would merely be an exercise in futility.

However, OCRE does not condone closing the record on QA at this time. OCRE is conducting a campaign encouraging Perry workers to come forth with information; it is appropriate to hold the record open to receive any evidence such persons may provide. The construction of Perry is far from complete; it is likely that further QA deficiencies will occur at the plant, and that many of these will rise to a level demanding consideration by this Board. One such event has recently occurred (see attached articles). There is no compelling reason to close the record on QA. Unit 1 cannot load fuel until December 1984, at the earliest. Justice will be better served by permitting intervenors equal and uncomplicated access to adjudication until the time of fuel load.

Respectfully submitted,

Susan L. Hiatt

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing were served by deposit in the U.S. Mail, first class, postage prepaid, this 8th day of October, 1983 to those on the service list below.

Susan L. Hiatt

SERVICE LIST

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The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, September 8, 1983—5:00 p.m. until 10:00 p.m.

Friday, September 9, 1983—8:00 a.m. until 12:00 noon.

The Subcommittee will continue its review of the basalt waste isolation project at the Hanford site and possibly review the DOE's site characterization plan for the proposed site if it is available by then.

All other items regarding this meeting remain the same as announced in the Federal Register published Monday, August 22, 1983 [48 FR 38123].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Ms. R. C. Tang (telephone

202/834-1414) between 8:15 a.m. and 5:00 p.m., e.d.t.

Dated: September 2, 1983.

Samuel J. Chilk.

Acting Advisory Committee Management Officer.

[FR Doc. 83-24580 Filed 9-7-83; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for

hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, The Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 31 day of August at Bethesda, Maryland.

For the Nuclear Regulatory Commission,
James V. Zimmerman,

Assistant Director Export/Import and International Safeguards Office of International Programs.

Applicant, date of application, date received, Application No.	Material in kilograms or reactor type and power	Enrichment (percent)	End-use	Country of destination
Westinghouse Electric Co., Aug. 11, 1983, Aug. 15, 1983, XR-144.	950 MWe, PWR reactor, El Dabas Unit I			Egypt.
Westinghouse Electric Co., July 29, 1983, Aug. 15, 1983, XSNM02068.	286,500 11,460	4	Initial core and 10 reloads for El Dabas Unit I	Egypt.

[FR Doc. 83-24580 Filed 9-7-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-329 and 50-330; Construction Permit Nos. CPPR-81 and CPPR-82, EA 83-03]

Consumers Power Co. (Midland Energy Center); Order Imposing Civil Monetary Penalties

Consumers Power Company (the "licensee") is the holder of Construction Permits No. CPPR-81 and No. CPPR-82, (the "permit") issued by the Nuclear Regulatory Commission (the "Commission"). These Construction Permits authorize the construction of the Midland Energy Center near Midland, MI. These Construction Permits were issued on December 15, 1972.

II

As a result of a special inspection of the licensee's facilities by the Nuclear Regulatory Commission's Region III office during the period October 12–November 25, 1982, and on January 19–21, 1983, the NRC Staff determined that a breakdown had occurred in the implementation of the Midland quality

assurance program as evidenced by numerous examples of noncompliance with nine of the eighteen criteria as set forth in 10 CFR Part 50, Appendix B.

The breakdown was caused by personnel who failed to follow procedures, drawings, and specifications; by first line supervisors and field engineers who failed to identify and correct unacceptable work; by construction management who failed to call for quality control inspections in a timely manner, and by quality assurance personnel who failed to identify the problems and ensure that corrective actions were taken. The NRC served the licensee a written Notice of Violation and Proposed Imposition of Civil Penalties by letter dated February 8, 1983. The Notice stated the nature of the violations, the Nuclear Regulatory Commission's requirements that were violated, and the amount of civil penalty proposed for each violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties with letters dated March 10, June 24, and July 12, 1983.

III

Upon consideration of Consumers Power Company's responses (March 10, June 24, and July 12, 1983) and the statements of fact, explanation, and argument in denial or mitigation contained therein, as set forth in the Appendix to the Order, the Director of the Office of Inspection and Enforcement has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed. However, in view of the \$3,500 overpayment made by Consumers Power Company in response to the January 7, 1981 Notice of Violation and Notice of Proposed Imposition of Civil Penalties, the cumulative amount of civil penalties due is reduced from \$120,000 to \$116,500.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 95-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the total amount of One Hundred Sixteen Thousand Five Hundred Dollars within thirty days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may within thirty days of the date of this Order request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Should the licensee fail to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, 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 a hearing shall be:

(a) whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in Section II above, and

(b) whether on the basis of such violations this Order should be sustained.

Dated at Bethesda, Maryland, this 29th day of August 1983.

For the Nuclear Regulatory Commission,
Richard C. DeYoung,
Director, Office of Inspection and Enforcement.

Appendix—Evaluations and Conclusions

The licensee admits violation A occurred as stated. The licensee also admits violation B occurred, but takes exception with portions of examples B.1.a and B.1.f. Although the licensee admits the two violations, the licensee requests that certain mitigating factors be considered.

The particular portions of Item B of the Notice of Violation (dated February 8, 1983), which were denied by the licensee, are restated below. The Office of Inspection and Enforcement's evaluation of the licensee's response is presented, followed by conclusions regarding the occurrence of the noncompliance and the proposed civil penalty. In addition, the licensee's request for reduction of civil penalty is summarized below. The Office of Inspection and Enforcement's evaluation of the licensee's request is presented followed by conclusions regarding the proposed civil penalty.

Item B—Statement of Noncompliance

10 CFR 50, Appendix B, Criterion II requires holders of construction permits for nuclear power plants to document, by written policies, procedures, or instructions, a quality assurance program which complies with the requirements of Appendix B for all activities affecting the quality of safety-related structures, systems, and components and to implement that program in accordance with those documents.

Contrary to the above, Consumers Power Company and its contractor did not adequately implement a quality assurance program to comply with the requirements of Appendix B as evidenced by the following examples:

1. 10 CFR 50, Appendix B, Criterion V requires, in part, "Activities affecting quality shall be prescribed by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall be accomplished in accordance with these instructions, procedures, or drawings."

Consumers Power Quality Assurance Program Policy No. 5, Revision 12, Paragraph 1.0 states, in part, "Instructions for controlling and performing activities affecting quality of equipment or activities such as . . . construction, installation . . . are documented in instructions, procedures . . . and other forms of documents."

Contrary to the above, the following instances of failure to accomplish activities affecting quality in accordance with instructions, procedures, specifications, or drawing requirements were identified:

a. Installation of diesel generator engine control panels 1C111, 1C112, 2C111, and 2C112 was not in accordance with the requirements delineated on foundation Drawing 7220-M18-250 in that the foundation bolt washers required by the subject drawing were not installed.

[Items B.1.b through B.1.e are not restated here.]

f. The inspectors identified various stock steel shapes in the "Q" area with yellow-colored paint on the ends (indicating the material was non "Q") and various steel stock shapes in the non "Q" area without painted ends (indicating "Q" material), contrary to the requirements of Field Instruction FIG-9.600, Revision 1.

[Items B.1.g through B.8 are not restated here.]

Contrary to the above:

a. Measures were not established or implemented to determine if materials ultimately restricted (per Nonconformance Report No. 3298) from installation or use in ASME Class I systems were actually installed or used in Class I systems.

b. As of November 10, 1982, two nonconforming conditions identified by the NRC on October 12, 1982, and confirmed by the licensee on October 19 and 25, respectively, had not been documented on a nonconformance report, a quality assurance report, or other appropriate report. The two nonconforming conditions were:

(1) The diesel generator exhaust hangers were not classified, designed, or built as "Q" as committed to in the FSAR. (See item 2.c.)

(2) The design of diesel generator monorail was not analyzed to seismic Category I

design requirements as committed to in the FSAR. (See item 2.d.)

This is a Severity Level III violation (Supplement II) (Civil Penalty)—\$60,000.

Licensee's Response to the Violation

The licensee admits that with the exception of portions of examples B.1.a and B.1.f, the violation occurred as stated in the NOV.

NRC Evaluation

Concerning example B.1.a., the licensee contends that since the inspection records panels 1C-111, 1C-112, 2C-111, and 2C-112 were open with attributes such as washer and torquing not yet inspected, the portion of the noncompliance pertaining to flat washers was not a violation. The licensee's position that open inspection records can negate a failure to install the required flat washers is unacceptable. The philosophy of inspection quality into the job cannot be accepted as a substitute for the philosophy of building quality into the job. The licensee admits the remaining portion of the violation which deals with the omission of bevel washers.

Concerning example B.1.f., the licensee contends that, contrary to the Notice of Violation, all steel in the "Q" area was identified in accordance with procedures. The licensee contends that some manufacturer's marking of this steel led to confusion. At the time of the NRC inspection the inspectors observed yellow-colored paint on steel in the "Q" area. This condition, as stated in the Notice of Violation, is contrary to the requirements of Field Instruction FIG-9.600, Revision 1. The licensee's contention that this paint was applied by some manufacturers does not mitigate the finding. Site quality control inspections should have detected the nonconforming paint and initiated proper corrective actions. The licensee admits the remaining portion of violation which deals with the marking of steel in "non-Q" areas.

Conclusion

These violations did occur as originally stated. The information in the licensee's response does not provide a basis for modification of the enforcement action.

Licensee's Request for Reduction of Civil Penalty

The licensee states that it does not contest the validity of the violations and agrees a civil penalty is warranted, but believes certain mitigating factors should be considered. Specifically, the licensee believes mitigation is warranted on the basis of corrective actions.

Evaluation of Licensee's Response

The licensee's corrective actions are recognized as being both comprehensive and far reaching. However, given the nature and severity of the noncompliance identified during the diesel generator building inspection and the history of the quality assurance program implemented at the Midland facility, the actions are not unusually extensive and, under the circumstances, do not warrant mitigation. In addition, we perceive the issuance of nonconformance reports in March 1983

i.b., B.1.c., B.1.d., B.1.e., B.1.f., and B.5) for nonconforming conditions identified by the NRC during the period of October 12–November 25, 1982, and January 19–21, 1983, be indicative of less than prompt corrective action.

Conclusion: The information in the licensee's request does not provide a basis for reduction of the proposed civil penalty.

FR Doc. 83-24566 Filed 9-7-83; 8:45 am
BILLING CODE 7590-01-M

International Atomic Energy Agency Draft Safety Guide; Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is completing development of a number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides are in the following five areas: Government Organization, Design, Siting, Operation, and Quality Assurance. All of the codes and most of the proposed safety guides have been completed. The purpose of these codes and guides is to provide guidance to countries beginning nuclear power programs.

The IAEA codes of practice and safety guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries in a specified safety area. Using this collation as a starting point, an IAEA working group of a few experts develops a preliminary draft of a code or safety guide which is then reviewed and modified by an IAEA Technical Review Committee corresponding to the specified area. The draft code of practice or safety guide is then sent to the IAEA Senior Advisory Group which reviews and modifies as necessary the drafts of all codes and guides prior to their being forwarded to the IAEA Secretariat and thence to the IAEA Member States for comments. Taking into account the comments received from the Member States, the Senior Advisory Group then modifies the draft as necessary to reach agreement before forwarding it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SC-D13, "Reactor Cooling Systems in Nuclear Power Plants," has been developed. The working group consisting of Mr. G. Ellia from France, Mr. C. N. Bapat from India, Mr. P. Channatt from the United Kingdom, and Mr. W. H. D'Ardenne (General Electric Company) from the U.S.A., developed the initial draft of this guide from an

IAEA collation. This draft was subsequently modified by the IAEA Technical Review Committee for Design and the Senior Advisory Group, and we are now soliciting public comment on a modified draft (Rev. 2, dated May 16, 1983). Comments received by the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, by October 21, 1983, will be particularly useful to the U.S. representatives to the Technical Review Committee and the Senior Advisory Group in developing their positions on its adequacy prior to their next IAEA meetings.

Single copies of this draft Safety Guide may be obtained by a written request to the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Washington, D.C. this 1st day of September 1983.

For the Nuclear Regulatory Commission.

Robert B. Minogue,
Director, Office of Nuclear Regulatory Research,

FR Doc. 83-24566 Filed 9-7-83; 8:45 am

BILLING CODE 7590-01-M

[Docket No. 50-410, Construction Permit No. CPPR-112 and EA 83-16]

Niagara Mohawk Power Corp. (Nine Mile Point, Unit 2); Order Imposing a Civil Monetary Penalty

I

Niagara Mohawk Power Corporation (the "licensee") is the holder of Construction Permit CPPR-112 issued by the Atomic Energy Commission, now the Nuclear Regulatory Commission ("NRC" or "Commission"), which authorizes the licensee to construct Nine Mile Point, Unit 2 in Oswego County, New York. The Construction Permit was issued on June 24, 1974.

II

An inspection of the licensee's activities under the permit was conducted between August 30 and September 30, 1982 at the Nine Mile Point Nuclear Station, Unit 2 in Oswego County, New York. An investigation was also conducted at Nine Mile Point Nuclear Station, Unit 2, on November 1-4, 1982. As a result of the inspection and investigation it appears that the licensee did not conduct its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated April 26, 1983.

The Notice states the nature of the violation, the provision of the Nuclear Regulatory Commission requirements which the licensee had violated, and the amount of civil penalty proposed for the violation. An answer dated June 30, 1983 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

Upon consideration of the answer received and the statements of fact, explanation, and argument for mitigation of the proposed civil penalty contained therein, and for the reasons set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 90-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of One Hundred Thousand Dollars (\$100,000) within thirty days of the date of this Order, by check, draft or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may within thirty days of the date of this Order request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings; if payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 24th day of August 1983.

For the Nuclear Regulatory Commission,
Richard C. DeYoung,
Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The violation and associated civil penalty identified in the NRC's April 26, 1983 Notice of Violation and Proposed Imposition of Civil Penalty is restated, the licensee's response is summarized, and the NRC's evaluation and conclusion regarding the licensee's response are presented in this appendix. The licensee's response was provided in a letter dated June 30, 1983, from Gerald K. Rhode, Senior Vice President, Niagara Mohawk Power Corporation (NMPC), to the Director, Office of Inspection and Enforcement. The NRC staff evaluation and conclusion are based on the June 30, 1983 letter.

Statement of Violation

10 CFR 50, Appendix B requires that each licensee implement a quality assurance program to be applied to the design, fabrication, construction and testing of the structures, systems and components of the facility.

Contrary to the above, the licensee did not comply with the provisions of Appendix B for the period June 1 through September 17, 1982 as evidenced below:

A. Criterion I of Appendix B requires the establishment and execution of a quality assurance program which assures that activities affecting safety-related functions have been correctly performed. Niagara Mohawk Power Corporation's application for a Construction Permit for Unit 2 commits to adherence to ANSI N 45.2.6-1978. This standard requires that each person who verifies the conformance of work activities to quality requirements shall be certified by his employer as being qualified to perform his assigned work, and the period of certification shall be established. ANSI N 45.2.6-1978 also requires a Level I rating classification as a prerequisite for inspecting and accepting safety-related installations. Stone & Webster Engineering Corporation (SWEC) Quality Assurance Directive (QAD) 2.5, Revision F, allows trainees possessing Associate Degrees to be certified as Level I inspectors after a three month training period provided the trainees work under the direct supervision of higher level personnel capable of performing assigned tasks.

However, numerous safety-related electrical installations (involving stud-welding, embedments, supplemental steel, cable, raceways, welding, and raceway supports) were inspected by Stone & Webster personnel classified as trainees with Associate Degrees. Installations inspected by these trainees were accepted by Stone & Webster even though the trainees were not certified because they did not possess the required three months inspection experience.

B. Criterion XVII of Appendix B requires, in part, that sufficient records be maintained to

furnish evidence of activities affecting quality.

However, Stone & Webster Level II quality assurance inspectors signed several inspection reports indicating they had performed the inspection when, in fact, the inspections were performed by a trainee. Stone & Webster's first and second line supervision was aware of this practice, but did not take action to discontinue it.

This is a Severity Level III violation (Supplement II) Civil Penalty—\$100,000

Summary of Licensee Response

By letter dated June 30, 1983, the licensee admits that inspections were performed at Nine Mile Point, Unit 2, by uncertified trainees who were not accompanied by Level II inspectors and that the Level II inspectors who were supervising such trainees indicated acceptance of the inspection results by co-signing and initialing inspection reports. The licensee states that the Level II inspectors believed that the trainees were qualified to perform the inspection tasks.

The licensee states that its own investigation, and an investigation by SWEC, revealed that the inspectors were adequately qualified and trained individuals, but were not certified because they had not completed the three month period of working experience. The licensee also indicates that such qualification is evidenced by the fact that all the trainees were subsequently successfully certified upon completion of experience requirements. However, the licensee acknowledges that it was improper to use these trainees to perform inspections.

The licensee claims the false records were the result of misunderstandings in connection with SWEC's FQC procedures rather than intentional falsification of documents, but the licensee acknowledges the seriousness of false records under any circumstances.

The licensee requests reduction of the proposed civil penalty from \$100,000 to \$40,000, claiming that amount is commensurate with the findings of the investigation as a Severity Level III violation. The licensee provides the following bases for mitigation: (1) The deficiencies noted did not involve inspections which were not performed, attempts to conceal unacceptable work, or misrepresentation of the quality of construction at Nine Mile Point, Unit 2; (2) the reinspection work which was performed demonstrated the problem did not result in construction deficiencies; (3) neither NMPC nor SWEC management, with the exception of the first line supervisor and possibly the second line supervisor, were aware of the existence of these practices prior to NRC investigation, and demonstrates that both NMPC and SWEC management attempted to provide proper direction regarding the manner in which inspections were to be conducted and documented; and (4) the licensee's investigation indicated that the problem was limited to the electrical Field Quality Control group and did not reflect an across-the-board deficiency in NMPC's quality assurance program.

NRC Evaluation of Licensee Response

The NRC staff acknowledges that the trainees who performed the inspections,

although not properly certified inspectors, may have been qualified individuals. The staff also recognizes that the practices involving use of trainees and falsifying records were not directed by NMPC or SWEC upper management, but that supervisory involvement was limited to the first and second line supervisors within SWEC. The staff agrees that there was no indication that the violation occurred in any other area except the electrical FQC group. The NRC staff further acknowledges that its inspection and investigation did not indicate that these practices resulted in construction deficiencies.

Nonetheless, the staff maintains that the significant concerns in this case are the facts that: (1) Contractor trainees performed inspections that they were not certified to perform; (2) Level II inspectors signed inspection reports indicating they performed an inspection when in fact the inspection was performed by an uncertified trainee; and (3) the first line (immediate) supervisor was aware of this practice and the evidence indicates that the second line supervisor was also aware of this practice, yet neither supervisor took action to discontinue the practice. Licensees are responsible for assuring that inspections are properly performed by certified individuals, that records of inspections accurately reflect the work inspected and the individual performing that inspection, and that such inspection activities are properly supervised.

Although a \$40,000 civil penalty is the base amount for a Severity Level III violation, the staff has determined to impose a civil penalty of \$100,000 to emphasize both the seriousness of falsifications, and the seriousness of supervision's awareness of a practice involving falsification and their failure to take action to discontinue this practice.

NRC Conclusion

This violation did occur as originally stated. The violation is appropriately classified at Severity Level III and an assessment of a \$100,000 civil penalty is appropriate in this case because it involves falsification of records under circumstances where supervision was aware of this practice, and failed to take appropriate action to discontinue it. The information in the licensee's response does not provide a basis for modifying the proposed enforcement action.

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OFFICE OF MANAGEMENT AND BUDGET

Amendment to OMB Circular A-125, "Prompt Payment" Opportunity for Comment

AGENCY: Office of Management and Budget.

ACTION: Comment on proposed OMB circular amendment.

y reactor for damage

The accident occurred when workers moved a giant crane to the reactor's steam separator, which sits on top of the core, and tried to hoist it out without unbolting it from the reactor's steel walls, Heffner said. A safety mechanism on the crane called a "jig" actually tripped, causing the crane to stop, but not before the crane, jig and the steam separator were damaged, Heffner said.

They were lifting (the steam separator) out and they had overlooked its being bolted down," Heffner said. "It apparently caused

some damage to the steam separator. Right below the steam separator is the core area."

A full assessment of damages and costs will not be available for as long as two weeks, but CEI hopes the construction schedule, which has been delayed many times, will not be set back again. The damage occurred to the first of two reactors being built at the plant. The first reactor is scheduled to be loaded with fuel in December 1984 and begin operating in mid-1985. The second reactor would not be operated until mid-1988.

Workers were doing routine maintenance when they lifted off the reactor's cap, then tried to lift out the steam separator. The steam separator is about 50 feet in circumference and 20 feet high, Heffner said.

Heffner said he does not know which worker or group of workers is responsible for the accident, but that is being investigated.

"There is some checking being done to find out exactly what is taking place," Heffner said. "Apparently, they just overlooked something. I don't know who it was."

Workers at power plant heard 'noise'

By Bill Sammon
News-Herald Staff Writer

Workers heard a "faint crackling" noise just before a construction accident at the North Perry Village nuclear power plant last Thursday, halted the operation to discuss the noise, then resumed work and caused the accident, a plant spokesman said.

"They talked about it (the noise) and decided it was nothing to be concerned about," said Elizabeth Shaw, a spokesman for the Cleveland Electric Illuminating Co., which is building the \$5.2 billion plant.

After work was resumed, there was a "loud noise — not deafening, but loud — so they stopped the lift, because they didn't want to destroy it," Shaw said.

The loud noise was the sound of a four-ton lifting device, called a "jig," breaking apart. A metal plate on the top of the jig cracked open and two welds below pulled apart, Shaw said.

The jig was being used with a giant crane to try to hoist a 53-ton part out of a nuclear reactor. The accident occurred because nine workers tried to lift out the part, called a steam separator, without first unbolting it. There were no injuries.

The separator should not have been bolted down in the first place, said Max Gildner, resident inspector from the U.S. Nuclear Regulatory Commission. Also, no one documented the bolting down of the separator, Shaw said.

"It should have been documented