

initiated prior to NRC enforcement action. Therefore, these factors should be taken into consideration prior to the NRC pursuing escalated enforcement and imposition of a civil penalty. The Licensee believes that to issue a civil penalty after action was taken to reorganize the fire protection program and provide enhanced management oversight would be contrary to the NRC Enforcement Policy. Furthermore, the imposition of a civil penalty under these circumstances would serve no purpose other than to punish the Licensee and would be contrary to the NRC Enforcement Policy to focus on current performance.

NRC Evaluation of Licensee's Request for Mitigation of Civil Penalty

The NRC does not agree with the Licensee's position that the fire protection program problems were identified by the Licensee and corrective action was taken prior to NRC involvement. Program oversight weaknesses were highlighted by the NRC in the February 1995 SALP Report, as discussed previously. In addition, concerns with the timeliness and adequacy of fire protection program corrective actions were also identified by the NRC in February 1996. Although a QA audit completed in May 1996 elevated the significance of the programmatic issues to upper TVA management, a follow-up NRC inspection in July 1996 found that these issues had not been resolved. Once the NRC focused on the multiple fire protection deficiencies in an inspection conducted in July and August 1996, the Licensee placed additional emphasis on this area, made organizational and personnel changes, and implemented plans to correct the deficiencies. The actions were initiated by the Licensee after the February 1996 identification by the NRC of: (1) A related violation and (2) inadequate responses to QA findings; but these actions were limited and did not ensure lasting corrective actions.

Section VI.B.2.c of the Enforcement Policy discusses the application of the factor of Corrective Action in the civil penalty assessment process. The purpose of this factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulations, or other requirements; and (2) develop and implement (in a timely manner) the lasting corrective actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violations, to prevent recurrence of

violations with similar root causes. In assessing Corrective Action, consideration is given to the timeliness of the action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's root cause analysis, and the comprehensiveness of the corrective action. Clearly, in this case, the program deficiencies at issue in the Notice were discovered by TVA as early as 1991, but corrective actions were not promptly taken, and since the issues were primarily licensee-identified, the time of reference used in assessing this factor is discovery, not when the issues were identified as apparent violations by the NRC. Further, although in most cases, schedules for long-term corrective actions were developed, management had not placed the appropriate priority on meeting schedules, which resulted in substantial deferments. Continued unjustifiable deferral of known deficiencies is unacceptable to the NRC.

NRC Conclusion

The NRC concludes that the violations occurred as stated and that collectively they represent a Severity Level III problem. Since the July/August 1996 NRC inspection, it appears that the licensee has implemented appropriate corrective actions to address these problems and is now appropriately focused on this program area. However, no adequate basis for either a reduction of the severity level or for mitigation of the civil penalty was provided by the licensee. Consequently, the proposed civil penalty in the amount of \$50,000 should be imposed.

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[Docket Nos. 70-7001 and 70-7002]

Criteria for Staff Implementation of "Backfitting" Requirements for Gaseous Diffusion Plants; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: On March 3, 1997, the U.S. Nuclear Regulatory Commission assumed regulatory jurisdiction over the Gaseous Diffusion Plants (GDPs) from the U.S. Department of Energy. The GDPs are regulated under 10 CFR part 76 of the Commission's regulations. The NRC staff has developed Office of Nuclear Material Safety and Safeguards (NMSS) Policy and Procedures Letter 1-53 to implement the "Backfitting" provision of 10 CFR 76.76. This

procedure is available for inspection at the NRC Public Document Room and Local Public Document Rooms discussed below.

DATES: The NMSS Policy and Procedures Letter 1-53 is effective on March 3, 1997 as an interim procedure. Comments on the interim procedure are due on or before May 27, 1997.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. ATTN: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm during Federal Workdays.

Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC and at the Local Public Documents Rooms (LPDRs), under Docket No. 70-7001, at the Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003; and under Docket No. 70-7002, at the Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Copies of NMSS Policy and Procedures Letter 1-53 may be obtained as indicated in the Discussion portion of Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Tom Wenck, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-8088.

SUPPLEMENTARY INFORMATION:

Discussion

On November 26, 1996, the Director, NMSS, issued the initial Certificates of Compliance to the United States Enrichment Corporation, authorizing the continuing operation of its GDPs. When the certificates became effective on March 3, 1997, the U.S. Nuclear Regulatory Commission (NRC) assumed regulatory jurisdiction over the GDPs from the Department of Energy.

Section 76.76 of part 76 to Chapter I of Title 10 of the Code of Federal Regulations (CFR) contains a provision on "Backfitting." "Backfitting" is defined in 10 CFR 76.76 to be "* * * the modification of, or addition to, systems, structures, or components of a plant or to the procedures or organization required to operate a plant; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules, that is either new or different from a previous NRC staff position." The intent of 10 CFR 76.76 is to provide a process by which to manage staff's imposition of new plant-

specific and/or generic regulatory staff positions on the GDPs.

Although backfits are expected to occur and are a part of the regulatory process, it is important for sound and effective regulation that backfits are conducted in a controlled process. The NRC staff has developed NMSS Policy and Procedures Letter 1-53 on GDP generic and plant-specific backfitting. Copies of this procedure can be obtained from the Commission Public Document Room (PDR), 2120 L Street, NW., Washington, DC and at the Local Public Document Rooms (LPDRs), under Docket No. 70-7001, at the Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003; and under Docket No. 70-7002, at the Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Appendix 1 to NMSS Policy and Procedures Letter 1-53 provides guidance to the NRC staff on the proper NRC mechanisms (e.g., rulemaking) to use in establishing or communicating legal requirements and NRC staff positions to certificatees. Appendix 4 contains guidance to the NRC staff for making backfit determinations. Once a backfit determination has been made, and the proposed backfit does not meet either of the 2 exception¹ given in 10 CFR 76.76(a)(4) (i) and (ii), the NRC staff is required by 10 CFR 76.76(a)(3) to perform a cost/benefit analysis to determine "that there is a substantial increase (emphasis added) in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that plant are justified in view of this increased protection."

Appendix 3 of NMSS Policy and Procedures Letter 1-53 contains guidance on application of the "Substantial Increase" Standard. This standard provides qualitative criteria for NRC staff to make a safety/safeguards "net benefits" determination of cost/benefits for the proposed backfit where a quantitative approach is not feasible.

NMSS Policy and Procedures Letter 1-53 is the first backfit procedure developed for facilities other than nuclear power reactor facilities. In addition, the GDPs are existing facilities which have operated under the Department of Energy for a number of

years. Recognizing that this procedure may be addressing new issues, the NRC will accept public comments which focus on specific technical contents of the procedure.

Opportunity for Comments

The GDP backfit implementing procedure will be used by the NRC staff as an interim procedure pending completion of public review and resolution of comments on this FR Notice. Comments will be accepted which focus on the specific appendices discussed above. Comments in other areas of the procedures will be considered if they are directly related to the backfit issue. Procedures such as NMSS Policy and Procedures Letters are used by NRC as guidance to the NRC staff on NRC's internal management process.

Dated at Rockville, Maryland this 17th day of March 1997.

For the Nuclear Regulatory Commission.

John T. Greeves,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-7641 Filed 3-25-97; 8:45 am]

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Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 3, 1997, through March 14, 1997. The last biweekly notice was published on March 12, 1997.

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve 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. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 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 30-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 30-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 before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 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

¹ These exceptions are backfits that are necessary in order to ensure (a) that the plants provide adequate protection to the health and safety of the public and are in accord with the common defense and security, or (b) to bring the plants into compliance with the certificates, rules or orders of the Commission, or into conformance with written commitments by the Corporation.