

amendment to Facility Operating License No. NPF-42 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation which is Enclosure 3 to the staff's letter dated October 29, 1999.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the license transfer referenced above is approved, subject to the following conditions:

(1) Westar Energy, Inc. shall, prior to the completion of the subject merger and transfer, provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that Westar Energy, Inc. has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) After receipt of all required regulatory approvals of the transfer of KGE's and KCPL's interests in WCGS to Westar Energy, Inc., KGE, KCPL, and WCNO shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt within five business days, and of the date of the closing of the transfer no later than seven business days prior to the date of closing. Should the transfer not be completed by October 30, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosures 2 and 3 of the staff's letter dated October 29, 1999, to conform the license to reflect the subject

license transfer is approved. Such amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 27, 1998, supplement dated November 10, 1998, and staff's letter dated October 29, 1999, with enclosures, which 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 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 29th day of October 1999.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 99-28863 Filed 11-3-99; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[IA 99-047]

### Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

#### I

In the Matter of Jasen Mallahan.

Mr. Jasen Mallahan (Mr. Mallahan) was employed as a radiographer by Professional Service Industries, Inc. (PSI or Licensee). The Licensee is the holder of License No. 12-16941-03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 on September 13, 1995. The license authorizes possession and use of sealed sources in the conduct of industrial radiography in accordance with the conditions specified therein.

#### II

On April 6, 1999, an investigation was initiated by the NRC Office of Investigations (OI) to determine if a radiographer and a radiographer's assistant, employees of an NRC licensee, deliberately violated NRC requirements at a jobsite in Pocatello, Idaho. Mr. Mallahan and a radiographer's assistant conducted radiographic operations at a plant in Idaho during the evening of September 14 and early morning of September 15, 1998. A radiography camera containing a sealed source of

about 60 curies of cobalt-60 was being used to complete panoramic radiographic testing of a large steel tank. The tank had four welded seams and each one required a one-hour shot and about 36 pieces of film. After the last shot, two plant employees breached the boundary set by the PSI workers. The plant employees became concerned that they may have received radiation exposures. However, it was determined that the source had been returned to its shielded position and locked prior to the employees' entry into the barricaded area. Therefore, the individuals did not receive a radiation exposure. As a result of this incident, OI determined that several violations of NRC requirements occurred during the third and fourth radiographic shots and that two violations occurred because of the deliberate actions of Mr. Mallahan. The violations include failure to supervise the radiographer's assistant (10 CFR 34.46) and to follow the two-person rule (10 CFR 34.41). Specifically, after the third one-hour shot was started, Mr. Mallahan began developing film in the dark room, leaving the assistant alone to maintain constant surveillance of the barricaded area. At the conclusion of the shot, Mr. Mallahan came out of the dark room and retracted the source into the device. After the fourth shot was started, Mr. Mallahan returned to the dark room, as before, leaving the assistant to maintain constant surveillance of the barricaded area. Upon completion of the 4th shot, Mr. Mallahan remained in the dark room and the assistant retracted the source, completed surveys of the device and guide tube, locked the device, and removed the key. According to the interview with OI, Mr. Mallahan acknowledged receiving radiation safety training which included the requirement for two-person surveillance during the conduct of radiographic operations. He further acknowledged receiving training on the prohibition of allowing a radiographer's assistant to conduct radiographic operations without direct supervision of a radiographer.

#### III

Based on the above, the NRC has determined that Mr. Mallahan, an employee of the Licensee, engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of 10 CFR 34.41(a) and 34.46. Specifically, the NRC has concluded that Mr. Mallahan deliberately failed to observe the two-person rule and failed to supervise a radiographer's assistant at a temporary jobsite on September 14 and 15, 1998. The NRC must be able to rely on the

Licensee and its employees to comply with NRC requirements. This deliberate act is significant because Mr. Mallahan, an experienced radiographer, failed to observe the safeguards designed to protect him and others from potentially dangerous radiation exposures. Mr. Mallahan's actions during this incident have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Mallahan were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Mr. Mallahan be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. If Mr. Mallahan is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally for a period of one year after the one year period of prohibition has expired, Mr. Mallahan is required to notify the NRC of his first employment in NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Mallahan's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

#### IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *It is hereby ordered, effective immediately, that:*

1. Mr. Mallahan is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Mallahan is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the one year period of prohibition has expired, Mr. Mallahan shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Mr. Mallahan shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Mallahan of good cause.

#### V

In accordance with 10 CFR 2.202, Mr. Mallahan must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 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. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Mallahan or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to Mr. Mallahan if the answer or hearing request is by a person other than Mr.

Mallahan. If a person other than Mr. Mallahan requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Mallahan or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Mallahan may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. **AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.**

Dated this 22nd day of October 1999, Rockville, Maryland.

For the Nuclear Regulatory Commission,  
**Carl J. Paperiello,**

*Deputy Executive Director for Materials, Research and State Programs.*

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#### NUCLEAR REGULATORY COMMISSION

[Docket No. 72-10]

**Northern States Power Company,  
Prairie Island Nuclear Power Plant;  
Notice of Docketing of the Materials  
License SNM-2506 Amendment,  
Application for the Prairie Island  
Independent Spent Fuel Storage  
Installation**

By letter dated August 31, 1999, Northern States Power Company (NSP) submitted an application to the Nuclear Regulatory Commission (NRC or the