

about the impact their request would have on maintaining safety and reducing unnecessary regulatory burden. Ideally, measures for safety impact would include changes in person-rem dose or changes in core damage frequency (CDF). Similarly, measures for regulatory burden reduction would include changes in licensee costs or power production capability. However, the staff recognizes that it may not be possible or practical to provide actual risk metrics or dollar savings, and that more qualitative measurements may be more realistic. The staff invites comments from our external stakeholders to ensure that the measures are uniform, practical, and meaningful, and provide the appropriate yardstick for measuring the impact that a proposed activity has on safety and regulatory burden. This information would be collected for many types of external stakeholder submittals including license amendments, topical reports, rulemaking petitions, and license renewal applications. The staff encourages suggestions on what other submittals such information should be collected for in response to this initiative. Recognizing that there are many factors that could inhibit licensees and other stakeholders from providing such information, we invite comments to obtain an understanding of what the factors are and how they may be overcome.

The information described above would assist NRR in (1) allocating staff resources and (2) measuring how the work NRR staff completes contributes to the agency goals of maintaining safety and reducing unnecessary regulatory burden. The staff is requesting comments on this proposed information collection initiative.

With respect to the first purpose, allocating staff resources, NRR would use the information collected to improve its effectiveness by pursuing those regulatory activities that maintain safety (or involve acceptable reductions in margin) but provide the highest return in reducing unnecessary regulatory burden. NRR is establishing a "work planning center" to centralize the planning and scheduling of NRR work activities, including the prioritization of specific work items. The priority factors include consideration of public health and safety, operational significance, statutory significance, and stakeholder standing and merit. Also factored into the work prioritization process is the required responsiveness (*e.g.*, normal, increased, or immediate). The information collected through this initiative would become part of the

input for this work planning and scheduling.

This use of information provided by licensees in order to prioritize agency work is similar to a regulatory approach employed by the agency and licensees in the early 1990's for cost beneficial licensing actions (CBLAs). In this approach, licensees identified for the agency those licensing actions that had high economic benefits, minimal impact on safety, and required minimal agency review time. Such actions were termed CBLAs, and the agency afforded these actions higher priority treatment. One difference between this proposed information collection initiative and the CBLA approach is that the latter was limited in its scope to licensing actions meeting the above criteria. A second, more important distinction between the two is that this proposed initiative has another purpose, which we describe in the following paragraph.

With respect to the second purpose, measuring how the work NRR staff completes contributes to the agency goals of maintaining safety and reducing unnecessary regulatory burden, the information collected would support the agency's efforts toward becoming a performance-based organization. This is consistent with the enactment of the Government Performance and Results Act (GPRA). The agency has established a framework for implementing the performance-based approach called the Planning, Budgeting, and Performance Management (PBPM) process. This PBPM process consists of setting the strategic direction, budgeting resources, and measuring and assessing performance. The agency reports the measures and assessment of performance in yearly reports to the President and the Congress. The information collected as described in this initiative would be used in these yearly reports to demonstrate to stakeholders that safety is being maintained even as the staff allows for unnecessary burden reduction. The staff would also use the information collected to demonstrate to stakeholders what the staff has accomplished with the resources that we have been given. This type of information would allow the staff to better align its outputs (*e.g.*, license amendments) to NRR performance goals (*e.g.*, maintain safety). By compiling this type of information over the fiscal year, instead of simply stating that the NRR staff completed 1500 licensing actions per year (outputs), the staff can also quantify such performance measures as direct cost savings to licensees, person-rem savings, and reduced shutdown risk

that resulted from approval of those licensing actions (outcomes).

The success of this voluntary initiative is dependent on industry's willingness to provide the information. The staff realizes that there may be concerns with how we will use the information collected to prioritize work within NRR. The staff invites comments and suggestions such that we may directly address such concerns. We also recognize that this information collection initiative should be as simple as possible while still providing meaningful information. We encourage comments on how to most simply characterize the safety and regulatory burden impact such that this information collection initiative does not become time-consuming or resource-intensive.

After receiving formal comments in response to this **Federal Register** notice, the staff plans to hold a public meeting to develop a consensus as to the type of voluntary information that could be used to measure impact on safety and reduction in unnecessary regulatory burden. This meeting is currently planned for February 2001. Finally, if reasonable and acceptable metrics can be developed and made available to all stakeholders, the staff expects to begin using voluntary information submitted under this initiative after October 1, 2001.

Dated at Rockville, Maryland, this 1st day of December, 2000.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing and Project Management, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

### **In the Matter of Mr. William Kimbley Mrs. Joan Kimbley; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)**

**I**

Mr. William Kimbley and Mrs. Joan Kimbley were previously officers of Midwest Testing, Inc., an entity that was a holder of NRC License No. 13-24866-02 issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 30. The license authorized the possession and use cesium-137 and americium-241 as sealed sources in moisture density gauges. The license was issued on August 19, 1992, and was terminated on June 12, 1995.

On June 12, 1995, a Confirmatory Order was issued prohibiting Mr. William Kimbley and Mrs. Joan Kimbley from engaging in licensed activities for five years from June 2, 1995. The Order was issued due to deliberate violations of NRC requirements involving: The failure to provide personnel monitoring devices to individuals using licensed material; the failure to perform leak tests of nuclear moisture density gauges; the storage of licensed material at an unauthorized location; the failure to request a license amendment to name a new Radiation Protection Officer; and, the use of nuclear moisture density gauges with an expired license.

## II

In 1998, the NRC, during a review of retired license files, identified that NRC License No. 13-24866-01, issued to Midwest Testing, Inc., contained inadequate documentation regarding the disposition of three nuclear moisture density gauges. License No. 13-24866-01 was superseded with License No. 13-24866-02. License No. 13-24866-02 was terminated on June 12, 1995.

A review of records indicated that during a November 18, 1994, telephone conversation with NRC staff, Mr. William Kimbley stated that two of his gauges were gone, sold to other authorized users. However, on November 23, 1994, Mr. Kimbley stated that he was unable to sell the gauges but would transfer the gauges to an authorized user. On December 14, 1998, NRC staff contacted Mr. William Kimbley to determine the final disposition of the nuclear gauges. During this telephone conversation, Mr. William Kimbley stated that Midwest Testing, Inc. was no longer in business and that one gauge was at a repair shop and the other two gauges were in California being refurbished. A subsequent NRC review of the license files identified the companies that received the gauges. The first company stated that they received one gauge, which was held by them for nonpayment of repair service fees and subsequently was sold to another company licensed to possess nuclear moisture density gauges. A second company stated that they received the other two gauges for storage on December 1, 1994, and returned the gauges to Mr. William Kimbley on January 15, 1997. It was then determined that a third company received these two gauges from Mr. William Kimbley for refurbishment on May 14, 1997, and returned both gauges to Mr. Kimbley on June 16, 1997. Due to the uncertainty of the whereabouts of

these two gauges, a special inspection was conducted January 5, 1999.

During this special inspection, Mr. William Kimbley stated that he did not have the gauges. After additional discussion with Mr. William Kimbley, the NRC found the two nuclear moisture density gauges at the residence of Mr. William Kimbley and Mrs. Joan Kimbley. It was verified by the NRC on January 8, 1999, that these two gauges were transferred to a licensee authorized to possess the gauges. NRC concluded that Mr. William Kimbley and Mrs. Joan Kimbley apparently had possessed these gauges from January 15, 1997, to May 14, 1997, and from June 16, 1997 to January 7, 1999, without a valid license and contrary to the June 12, 1995, Confirmatory Order.

The NRC Office of Investigations initiated an investigation on January 5, 1999, to determine whether Mr. William Kimbley and Mrs. Joan Kimbley deliberately possessed licensed material in violation of NRC requirements and the June 12, 1995, Confirmatory Order. The investigation also reviewed whether Mr. William Kimbley made false statements to NRC staff. As a result of the investigation, it was determined that Mr. William Kimbley and Mrs. Joan Kimbley deliberately possessed licensed material in violation of NRC requirements and the June 12, 1995, Confirmatory Order. In addition, the investigation determined that Mr. William Kimbley deliberately provided inaccurate information to NRC staff on November 18, 1994, December 14, 1998, and January 5, 1999, when he denied he had possession of the nuclear moisture density gauges.

A predecisional enforcement conference was conducted with Mr. William Kimbley on September 8, 2000, to discuss the possession of nuclear moisture density gauges in apparent deliberate violation of NRC requirements and the June 12, 1995, Confirmatory Order. Mr. William Kimbley stated the gauges had been stored at a licensed facility and were subsequently shipped to the gauge manufacturer for refurbishment. Mr. William Kimbley stated that the manufacturer returned the gauges to him without informing him that they were being returned. Mr. Kimbley stated he had difficulty selling the gauges due to their age and subsequently moved them to his home where they were found by the NRC. Mr. Kimbley stated he knew the gauges were required to be stored in a licensed facility and had tried to keep them there. Mr. Kimbley also stated that he did not consider whether possessing the gauges violated the June 12, 1995, Confirmatory Order.

## III

Based on the above, it appears that Mr. William Kimbley and Mrs. Joan Kimbley deliberately violated Section 81 of the Atomic Energy Act of 1954, as amended (Act); 10 CFR 30.3; and the June 12, 1995, Confirmatory Order. Section 81 of the Act and 10 CFR 30.3 require, in part, that no person possess byproduct material except as authorized in a general or specific license. Specifically, the NRC has concluded that Mr. William Kimbley and Mrs. Joan Kimbley deliberately violated NRC requirements and the June 12, 1995, Confirmatory Order since they knowingly possessed two nuclear moisture density gauges containing byproduct material without an NRC license between January 15, 1997, and May 14, 1997, and between June 16, 1997 and January 7, 1999. In addition, it appears that Mr. William Kimbley deliberately violated 10 CFR 30.10. 10 CFR 30.10 requires, in part, that a person may not deliberately submit to NRC information that the person knows to be incomplete or inaccurate. Mr. William Kimbley deliberately violated 10 CFR 30.10 on November 18, 1994, December 14, 1998, and January 5, 1999, when he denied possessing nuclear moisture density gauges. Consequently, in light of the nature of the violations, the length of time the violations existed, and the deliberate nature of the violations, 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. William Kimbley and Mrs. Joan Kimbley were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. William Kimbley and Mrs. Joan Kimbley be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. William Kimbley and Mrs. Joan Kimbley are required to notify the NRC of their first employment in NRC-licensed activities for a period of five years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. William Kimbley's and Mrs. Joan Kimbley'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 30.3, 10 CFR 30.10, and 10 CFR 150.20, It Is Hereby Ordered, Effective Immediately, That:

1. Mr. William Kimbley and Mrs. Joan Kimbley are prohibited for five years from the date of this Order from engaging in NRC-licensed activities and from possessing licensable byproduct materials. 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. William Kimbley and Mrs. Joan Kimbley are currently involved with another licensee in NRC-licensed activities, they must immediately cease those 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 five years after the five-year period of prohibition has expired, Mr. William Kimbley and Mrs. Joan Kimbley shall, within 20 days of their acceptance of their first employment offer involving NRC-licensed activities or their 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 they are, or will be, involved in the NRC-licensed activities. In the notification, Mr. William Kimbley and Mrs. Joan Kimbley shall include a statement of their commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that they 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. William Kimbley and Mrs. Joan Kimbley of good cause.

## V

In accordance with 10 CFR 2.202, Mr. William Kimbley and Mrs. Joan Kimbley 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. William Kimbley and Mrs. Joan Kimbley 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. William Kimbley and Mrs. Joan Kimbley if the answer or hearing request is by a person other than Mr. William Kimbley or Mrs. Joan Kimbley. If a person other than Mr. William Kimbley or Mrs. Joan Kimbley 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. William Kimbley or Mrs. Joan Kimbley 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. William Kimbley and Mrs. Joan Kimbley, 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 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 28th day of November, 2000.

For the Nuclear Regulatory Commission.

**Carl J. Paperiello,**

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

[FR Doc. 00-31156 Filed 12-6-00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-305]

### **Nuclear Management Company, LLC; Kewaunee Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR-43 issued to the Nuclear Management Company, LLC (NMC or the licensee), for operation of the Kewaunee Nuclear Power Plant (KNPP or Kewaunee), located in Kewaunee County, Wisconsin.

#### **Environmental Assessment**

##### *Identification of the Proposed Action*

The proposed action would increase the number of fuel assemblies that can be stored in the Kewaunee spent fuel pools (SFPs) from 990 fuel assemblies to 1,205 fuel assemblies, an increase of 215 fuel assemblies, by installing 215 new spent fuel storage racks in the new north canal pool. In addition, the new spent fuel storage racks will use Boral as the neutron absorber material.

The proposed action is in accordance with the licensee's application for amendment dated November 18, 1999, as supplemented by letter dated August 7, 2000.

##### *The Need for the Proposed Action*

KNPP is a pressurized water reactor (PWR) which commenced commercial operation in 1974, and its current operating license will expire in December 2013. Initially, KNPP was designed to accommodate 168 spent fuel assemblies (SFAs). The last phase of re-racking the SFP at KNPP was completed in 1987, which provided for the current storage capacity of 990 SFAs. Currently, KNPP has two storage pools. The larger south pool contains racks with a storage capacity for 720 SFAs, and the smaller north pool contains racks with a storage capacity for 270 SFAs. There are presently 718 SFAs stored in the south pool and 106 SFAs stored in the north pool. As a result of the present unavailability of an off-site spent fuel