1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Code, Section XI, Appendix G, requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III.

Pursuant to 10 CFR 50.12(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. . . .''

The underlying purpose of the requirement to use the K_{1a} curve to develop P–T limits is to provide an adequate margin of safety against brittle failure of the RPV. Code Case N–640 permits application of the lower bound static initiation fracture toughness value (K_{1a}) equation as the basis for establishing the curves in lieu of using the lower bound crack arrest fracture toughness value equation (*i.e.,* the K_{1a} equation, which is based on conditions needed to arrest a dynamically propagating crack, and which is the method invoked by Appendix G to Section XI of the ASME Code). Use of the K_{1c} equation in determining the lower bound fracture toughness in the development of the P–T operating limits curve is more technically correct than the use of the K_{1a} equation since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{1c} equation appropriately implements the use of the static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. Therefore, use of the K_{1c} curve in developing P–T limits provides an adequate margin against brittle failure of the RPV. As a result, the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the staff concludes that requesting an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the P–T limits for LaSalle County Station, Units 1 and 2.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest, and that special circumstances are present. Therefore, the Commission hereby grants Commonwealth Edison Company an exemption from the requirements of 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, for LaSalle County Station, Units 1 and 2.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (65 FR 60986). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of November 2000.

John A. Zwolinski,

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

[FR Doc. 00–29249 Filed 11–14–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[IA–00–039]

In the Matter of Mr. David D. Klepadlo; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. David D. Klepadlo (Mr. Klepadlo) is currently the President of David D. Klepadlo & Associates (K & A). K & A was the holder of Materials License No. 37–30236–01 issued by the Nuclear Regulatory Commission (NRC) on September 11, 1995, pursuant to 10 CFR Part 30, until such License was revoked on August 9, 1999, for non-payment of fees. The license authorized possession and use of two Troxler Electronics Laboratories (Troxler) portable nuclear density gauges (gauges).

II

On July 9, 1999, an Order Revoking License was issued to K & A for non-payment of fees, and on August 9, 1999, the license was revoked. Following the revocation of K & A's license, Mr. Oberg, an NRC inspector, contacted Mr. Klepadlo by telephone on August 12, 1999. Mr. Klepadlo told Mr. Oberg that he no longer possessed the two Troxler gauges, having returned them to Troxler, and further stated that he would look for the documentation showing the gauges were returned to Troxler and would contact the NRC. In a letter to the NRC dated September 3, 1999, Mr. Klepadlo stated, ''These test gauges were returned to Troxler in North Carolina in the Fall of 1997 and have not been in our possession since that time.'' However, Mr. Klepadlo did not provide any documentation supporting that the gauges were returned to Troxler.

On October 25, 1999, the NRC sent a letter to K & A indicating that the NRC had not yet received any documentation from K & A that the gauges had been returned to Troxler, and that Troxler had no record of receipt of the gauges. This letter also requested that K & A verify the final disposition of the gauges. Since repeated attempts by the NRC failed to ascertain the disposition of the gauges, an NRC inspection was conducted at the K & A facility on February 22, 2000, during which both Troxler gauges were found to be stored at the facility.

III

The NRC requirement of 10 CFR 30.10(a)(1) prohibits deliberate misconduct that causes a licensee to be in violation of any license issued by the NRC. Also, the NRC requirement of 10 CFR 30.10(a)(2) prohibits an individual from deliberately submitting to the NRC information that the individual knows to be incomplete or inaccurate in some respect material to the NRC.

The NRC has concluded that Mr. Klepadlo violated 10 CFR 30.10(a)(1) and (a)(2). Specifically, after the NRC revoked K & A's Materials License No. 37–30236–01 on August 9, 1999, Mr. Klepadlo violated 10 CFR 30.10(a)(1) and (a)(2) when he knowingly and deliberately provided false information to the NRC, which caused K & A to violate 10 CFR 30.9. The violation occurred when Mr. Klepadlo: (1) told an NRC inspector during a telephone conversation on August 12, 1999, that he no longer possessed the gauges, having returned them to Troxler; and (2) signed and submitted a letter to the NRC on September 3, 1999, that the gauges were returned to Troxler in North

Carolina in the Fall of 1997 and have not been in K & A's possession since that time. This was false information because the gauges were at the K & A facility at the time of Mr. Klepadlo's August 12, 1999, statement and September 3, 1999, letter.

Before the NRC made this final enforcement decision, a letter from the NRC dated September 18, 2000, afforded Mr. Klepadlo an opportunity to request a predecisional enforcement conference or respond in writing to the apparent violation. Mr. Klepadlo responded to the apparent violation in a letter dated October 17, 2000, stating that the NRC's conclusion that he made false statements to the NRC concerning the location of the gauges was incorrect. Mr. Klepadlo stated that as President of K & A, he cannot personally know the location of every piece of equipment owned by the company, and therefore, was not aware of the specific location of the gauges at each and every moment.

Notwithstanding Mr. Klepadlo's contention, the NRC maintains that the violation was deliberate. In making this conclusion, the NRC considered that: (1) the Radiation Safety Officer (RSO) at K & A, who cared for the gauges, was laid off in January 1998; (2) Mr. Klepadlo, during a transcribed interview with an NRC investigator on June 13, 2000, stated under oath, that once the RSO had left employment at K & A, Mr. Klepadlo's ''only objective in life'' was to get rid of the gauges, and that's what he tried to do, spending a lot of time contacting everyone he knew; and (3) the gauges were found at the K & A facility during an NRC inspection on February 22, 2000. Mr. Klepadlo, having been unsuccessful in his attempts to get rid of the gauges and having stated that his only objective after the RSO left was to get rid of the gauges, must have known the gauges were at K & A at the time of his August 12, 1999, oral statement to Mr. Oberg, and in his September 3, 1999, letter to the NRC. Therefore, the NRC concludes that his false statements were also deliberate.

IV

The NRC must be able to rely on the integrity of Licensee employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Klepadlo's actions in deliberately violating Commission regulations, and deliberately and knowingly providing false information to the NRC calls into question his trustworthiness and reliability, and raises serious questions as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that any future licensed activities could be conducted in compliance with the Commission's requirements, and that the health and safety of the public would be protected, if Mr. Klepadlo were permitted to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that David D. Klepadlo be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Klepadlo is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance and willfulness of Mr. Klepadlo's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

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 part 30, and 10 CFR 150.20, *It Is Hereby Ordered, Effective Immediately, That:*

(1) David D. Klepadlo is prohibited from engaging in NRC-licensed activities for three years from the 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. Klepadlo is currently involved with another licensee in NRC-licensed activities, he 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 one year after the three year period of prohibition has expired, Mr. Klepadlo 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 V.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 notification Mr. Klepadlo shall include a statement of his commitment to comply 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. Klepadlo of good cause.

VI

In accordance with 10 CFR 2.202, David D. Klepadlo 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. Klepadlo 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 Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Klepadlo if the answer or hearing request is by a person other than Mr. Klepadlo. If a person other than Mr. Klepadlo requests a hearing, that person shall set forth with particularity the manner in which that person's 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. Klepadlo 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. Klepadlo 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 V 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 V 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 3rd day of November 2000.

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. 70–784]

The Office of Nuclear Material Safety and Safeguards Environmental Assessment, and Finding of No Significant Impact Related to the Approval of the Remediation (Decommissioning) Plan for the Formerly Licensed Union Carbide Corporation Facility (UCC), Lawrenceburg, Tennessee, License Nos. SNM–720 and SNM–724 (Terminated)

The U.S. Nuclear Regulatory Commission (hereafter referred to as NRC staff) is considering approval of the remediation (decommissioning) plan (DP) for the formerly licensed Union Carbide Corporation facility (UCC), Lawrenceburg, Tennessee (UCAR, 1998). This DP was submitted by UCAR Carbon Company, Inc. (UCAR) to NRC on August 19, 1998. UCAR is obligated to remediate the UCC site to meet the release criteria established in the Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan (hereafter known as the SDMP Action Plan) (NRC, 1992), and 10 CFR part 20 subpart E.

Introduction

On August 26, 1963, UCC was issued Special Nuclear Materials License No. SNM–724 (SNM–724), for testing equipment and nuclear fuels development. License No. SMB–720 (SNM–720), which authorized the possession of source material, was also held by the site. SNM–724 was terminated on June 4, 1974, and the U.S. Atomic Energy Commission (AEC) released the site for unrestricted use. SMB–720 was superceded by the State of Tennessee License No. S–5002–H8 and was terminated on August 28, 1975.

SNM–724 authorized possession of up to 500 grams (g) of fully-enriched (<94 percent) uranium for testing of equipment and processes in the Lawrenceburg Fuel Development Facility located at Highway 43 South, Lawrenceburg, Tennessee. On May 22, 1964, the license was amended to authorize possession of 150 kilograms (kg) of U^{235} to make graphite-coated uranium-thorium carbide particles and graphite-matrix fuel elements. The possession limit was increased to 475 kg on June 12, 1964.

By letter dated February 4, 1974, the UCC submitted ''closeout'' survey information and requested that SNM–724 be terminated and the facility be released for unrestricted use. On April 5, 1974, Region II performed a closeout inspection which was documented in their Inspection Report 70–784/74–1. Region II recommended that the license be terminated, and the facility be released for unrestricted use. By AEC letter dated June 4, 1974, SNM–724 was terminated and the UCAR facility released for unrestricted use.

In 1991, Oak Ridge National Laboratory (ORNL) was contracted by NRC, to review and evaluate all nuclear material licenses terminated by NRC or its predecessor agencies, since inception of material regulation in the late 1940s. One of the objectives of this review was to identify sites with potential for residual contamination, based on information in the license documentation. NRC evaluated the available survey data to determine if the information was sufficient to conclude that the site meets the existing guidelines for unrestricted use.

Radiological assessments performed at the UCAR facility and immediate vicinity have identified the presence of enriched and depleted uranium in soil excess of current radiological release criteria. Sampling identified soil/sediments contamination in small areas around the processing buildings.

Volumetric contaminations were found to be above the release criteria in four areas around Building 10: (1) Soil surrounding the incinerator pad; (2) sediment in the manholes and cooling water tanks; (3) laundry sump tank; and (4) the surface layer of concrete flooring. A number of core samples as well as near surface samples were taken near the incinerator pad and the range for total uranium concentration was 1.33 to 3,655 pCi/g. The estimated average depth of the soil contamination is one foot resulting in a contaminated soil volume estimate of 500 cubic feet. Volumetric contamination above the release critieria was found in three areas in and around Building 5: (1) Sink trap; (2) concrete flooring; and (3) asphalt outside exit.

There was no indication of radioactive material above the release criteria beyond the former restricted area boundary in the ground water, settling basins, or former sanitary sewer system.

UCAR will be conducting remediation activities without a license, because its license was terminated in 1974. However, remediation will be performed in accordance with current regulations and release limits (UCAR, 1998).

Planned Decommissioning Action

Decommissioning of the UCAR facility shall comply with 10 CFR part 20 subpart E for unrestricted use (NRC 1997) criteria. The conduct of decommissioning and decontamination in compliance with these criteria provides adequate protection of the public health and safety and of the environment. In implementing the decommissioning plan, UCAR shall reduce residual contamination in soil to be below the NRC's unrestricted release criteria identified in 10 CFR part 20, subpart E (NRC, July, 1997). Soils which exceed the derived concentration guideline level (DCGL) will be removed and disposed of as low level radioactive waste.

General exposure rate levels will be reduced to levels below 5 microroentgen per hour (microR/hr) above background, measured at 1 meter (m) above the surface.

UCAR is proposing to conduct a final survey to demonstrate: (1) That uranium and thorium contamination levels in the soil are below the [25 millirem per year (mRem/yr)] DCGL's and (2) that exposure rate measurements are less than 5 microR/hr measured 1 meter above the surface. UCAR has committed to conducting the final survey in accordance with NRC approved site survey plan, as well as any applicable regulatory requirements.