

corrective actions that included re-instructing and re-training its employees; and the Licensee has had no prior violations of NRC regulations.

The Licensee also argues that none of the rationales set forth in the enforcement policy for issuing a penalty are applicable in this case. Specifically, the Licensee indicates that the penalty will not encourage prompt identification and prompt corrective action because the Licensee had already identified and corrected the violations. The Licensee also states that the penalty will not deter future violations because the theft of the radioactive device was the result of a criminal act by a third party. Finally, the Licensee maintains that the penalty will not focus the Licensee's attention on significant violations because the Licensee believes that the violation was insignificant.

### 3. NRC Evaluation of Licensee's Request for Withdrawal of the Civil Penalty

Notwithstanding the Licensee's contentions regarding the significance of the violation, the NRC maintains that the violation was appropriately classified at Severity Level III, consistent with the NRC enforcement policy. Since the gauge contained less than 1000 times the quantity of cesium-137 set forth in 10 CFR Part 20, Appendix C (the gauge contained approximately 800 times that quantity), the failure to secure the gauge and maintain surveillance over it might have been classified at Severity Level IV, in accordance with Section C.11 of Supplement IV of the enforcement policy, had the gauge not been stolen. However, since the failure to secure or maintain constant surveillance over the gauge, resulted in the gauge being stolen and radioactive material entering the public domain and being handled by members of the public, the violation is more appropriately classified at Severity Level III. Such violations are considered significant since, although the source is normally shielded within the gauge, significant radiation exposures could occur if the source becomes unshielded while in the public domain.

The NRC agrees that the gauge was properly labeled, the Licensee took appropriate actions once it discovered that the gauge was missing, the violation was not willful, and the Licensee's prior enforcement history has been good. As a result, consistent with the NRC enforcement policy, a civil penalty would not normally be warranted for a Severity Level III violation, as the NRC indicated in its February 27, 2002 letter transmitting the civil penalty. However, although the outcome of the normal civil penalty process in this case would not result in a civil penalty, a civil penalty is warranted, in accordance with Section VII.A.1.g of the enforcement policy since the case involved a loss/improper disposal of a sealed source. The Commission included Section VII.A.1.g. in the policy since it believes that normally issuance of a civil penalty is appropriate for cases involving loss of a sealed source or device. This is necessary to properly reflect the significance of such violations.

Although the loss of the gauge was due to the criminal act of a third party, the Licensee

is responsible for that occurrence since the gauge user left the gauge unattended and unsecured, which directly contributed to the theft. Accordingly, issuance of the violation, categorization of the violation at Severity Level III, and imposition of the related civil penalty, is appropriate in this case, and consistent with the NRC enforcement policy.

### 4. NRC Conclusion

The NRC has concluded that the Licensee did not provide an adequate basis for withdrawal of the civil penalty. Accordingly, the proposed civil penalty in the amount of \$3,000 should be imposed.

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy, on Thermal-Hydraulic Phenomena, and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy, on Thermal-Hydraulic Phenomena, and on Reliability and Probabilistic Risk Assessment will hold a joint meeting on May 31, 2002, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, May 31, 2002—8:30 a.m. until the conclusion of business.*

The Subcommittees will continue their review of the proposed risk-informed revisions to the technical requirements of the Emergency Core Cooling Systems Rule (10 CFR 50.46 and Appendix K). The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301-415-8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: May 7, 2002.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

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## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG-1118, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG-1118, the Proposed Revision 1 of Regulatory Guide 1.53, "Application of the Single-Failure Criterion to Safety Systems," is being developed to describe a method acceptable to the NRC staff for complying with the NRC's regulations with respect to satisfying the single-failure criterion for safety systems.