

Overpower delta temperature and overtemperature delta temperature (proposed LCO 3.3.1).

Refueling water storage tank boron concentration (proposed LCO 3.5.4).

Accumulator boron concentration (proposed LCO 3.5.1). Shutdown margin (proposed LCO 3.1.1).

(16) Relocate the containment integrity requirements during refueling reactor operating mode 6 (Refueling) from the TSs.

(17) Relocate the reactor coolant pump underfrequency trip function from the TSs.

(18) Relocate the AFW and standby AFW system manual initiation functions from the TSs.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 26, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available 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 the Rochester Public Library, 115 South Avenue, Rochester, NY 14610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Ledyard B. Marsh, Director, Project Directorate I-1: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Winston & Strawn, 1400 L St. NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 26, 1995, which is 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 the Rochester Public Library, 115 South Avenue, Rochester, NY 14610.

Dated at Rockville, Maryland, this 13th day of September.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95-23804 Filed 9-25-95; 8:45 am]

BILLING CODE 7590-01-P

[IA 95-037]

Dr. Hung Yu; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Dr. Hung Yu was employed by the Department of the Army at its Madigan Army Medical Center, Fort Lewis (Tacoma, Washington). Madigan Army Medical Center (Licensee) holds License No. 46-02645-03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35 on May 12, 1960. The license authorizes possession and use of byproduct material in accordance with the conditions specified therein.

Dr. Yu was employed by the Licensee from approximately October 1993 to August 2, 1995, as a medical physicist. During his employment with the Licensee, Dr. Yu reported to the Chief, Radiation Therapy Service, and was responsible for supervising a radiation dosimetrist. Among other tasks, Dr. Yu was responsible for all dosimetry, including developing treatment plans, evaluating the adequacy and accuracy of the treatment plan for each brachytherapy treatment, and modifying treatment plans as required by authorized users. Dr. Yu was also responsible for performing the duties of a radiation therapy dosimetrist, as needed, and directing all physics aspects of intracavitary and interstitial implants. The latter responsibilities included ordering and accepting or receiving brachytherapy sources, source preparation and related quality assurance tasks, and computer calculations, including providing calibration and decay factors for brachytherapy sources. In his role as a medical physicist who supervised a dosimetrist, Dr. Yu was additionally responsible for ensuring that the dosimetrist's activities were also in compliance with NRC regulations and the Licensee's procedures and Quality Management Program.

II

On June 2, 1995, the Licensee notified the NRC of a misadministration which occurred on May 10, 1995, but had gone unrecognized by the Licensee until June 2, 1995. This finding prompted a review by the Licensee which identified additional misadministrations. On June 8, 1995, the Licensee reported three misadministrations which occurred on February 9 and August 23, 1994, and January 11, 1995. On June 12, 1995, an additional misadministration was reported to have occurred on February 3, 1995. The misadministrations all

involved brachytherapy implants using iridium-192 sealed sources, and each treatment was performed in accordance with a treatment plan developed by Dr. Yu or under his direction.

The NRC began an inspection of the events on June 6, 1995. An investigation by the NRC's Office of Investigations (OI) was initiated on June 13, 1995. Both the NRC inspection and NRC investigation are ongoing. The Licensee initiated an internal investigation of the misadministrations and related issues on June 2, 1995, and provided the NRC with a written report of its investigation on August 22, 1995. The NRC inspection and investigation demonstrate that the cause of the misadministrations was an input error of one parameter used by the computerized treatment planning system to calculate dose rates for treatment plans. Specifically, Dr. Yu had instructed the dosimetrist to use a value, for a "calibration factor" used by the system to calculate dose rates, which was not calculated according to the computer system manufacturer's instructions.

NRC's interviews of Dr. Yu and other Licensee personnel establish that on June 2, 1995, Dr. Yu engaged in deliberate misconduct in violation of 10 CFR § 30.10(a)(2) by deliberately providing inaccurate information to the Licensee on a matter material to the NRC, specifically the dose calculation error that caused the May 10, 1995 misadministration. In response to repeated questions on June 2, 1995, by the Radiation Safety Officer (RSO), and in the presence of the authorized user (also the Chief, Radiation Therapy Service), regarding the cause of the May 10, 1995 misadministration, Dr. Yu stated that it was a "computer error," that "it was hardware error," and that it was a "software error." Dr. Yu's statements to the Licensee were deliberately inaccurate because on May 16, 1995, Dr. Yu was made aware by the computer system manufacturer that his data entry error (i.e., input error) to the treatment planning system was the cause for the dose calculation errors and, immediately after being informed of his error, Dr. Yu began to correctly enter the calibration factor. Only after the RSO stated that he had discussed the treatment plan calculations with the dosimetrist did Dr. Yu explain that the cause of the misadministration was his use of an erroneous input parameter. Dr. Yu's provision of inaccurate information to the RSO and Chief, Radiation Therapy Service, regarding the cause of the dose calculation error associated with the May 10, 1995 misadministration interfered with the

Licensee's investigation required by 10 CFR 35.21(b)(1) of potential misadministrations.

Furthermore, in violation of 10 CFR 30.10(a)(1), Dr. Yu engaged in deliberate misconduct which caused the Licensee to be in violation of NRC requirements including: (1) 10 CFR 20.1906(b), which requires, in part, that upon receipt of labelled packages containing brachytherapy sources, the packages be tested for contamination; (2) 10 CFR 20.2103(a), which requires, in part, that each licensee maintain records showing the results of surveys required by 10 CFR 20.1906(b); and (3) 10 CFR 30.9 which requires, in part, that information required to be maintained by the Commission's regulations shall be complete and accurate in all material respects. For example, Dr. Yu, when questioned about the package survey results of August 19, 1994, admitted to an NRC inspector and OI investigator that he had failed to perform NRC-required package receipt surveys for radioactive contamination and that he had deliberately completed Licensee records to falsely reflect that the contamination surveys had been performed. Dr. Yu stated that, although he was aware of the NRC requirement to perform the survey, he did not believe that the survey was important, that it was just a requirement and a formality and, therefore, he just recorded that the survey had been conducted.

III

Although the NRC investigation is continuing, based on the information developed to date, the NRC concludes that Dr. Yu engaged in deliberate misconduct: (1) In violation of 10 CFR 30.10(a)(2), by knowingly providing to the Licensee on June 2, 1995, inaccurate information relating to a matter material to the NRC, specifically the cause of the error that resulted in the misadministration; and (2) in violation of 10 CFR 30.10(a)(1), which caused the Licensee to be in violation of NRC requirements, including 10 CFR 20.1906(b), 10 CFR 20.2103(a), and 10 CFR 30.9(a), by deliberately failing to conduct surveys of labelled packages containing brachytherapy sources and deliberately making entries to Licensee records to show that he had conducted such surveys.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Dr. Yu's actions in causing the Licensee to violate NRC requirements and his misrepresentations to the Licensee have

raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees. Further, Dr. Yu has demonstrated an unwillingness to comply with NRC requirements necessary for the protection of the health and safety of personnel and patients affected by the areas of his responsibility. Dr. Yu's deliberate false statements to Licensee officials concerning radiological exposure to patients and his deliberate violation of NRC requirements is not acceptable conduct for a person engaged in NRC-licensed activities.

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 would be protected if Dr. Yu were permitted at this time to be involved in any NRC-licensed activities.

Therefore, the public health, safety and interest require, pending completion of the investigation and further action by the NRC, that Dr. Yu be prohibited from involvement in licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the 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, 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:

Pending further investigation and order by the NRC, Hung Yu, Ph.D. is prohibited from participation in any respect in NRC-licensed activities. For the purposes of this paragraph, NRC-licensed activities include licensed activities of: (1) An NRC licensee, (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20, and (3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.

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

V

In accordance with 10 CFR 2.202, Hung Yu, Ph.D. 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 Hung Yu, Ph.D. 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: Chief, Docketing and Service Section, 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 IV, Suite 400, 611 Ryan Plaza, Arlington, Texas 76011, and to Hung Yu, Ph.D., if the answer or hearing request is by a person other than Hung Yu, Ph.D. If a person other than Hung Yu, Ph.D. 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 Hung Yu, Ph.D. 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), Hung Yu, Ph.D., or any other person adversely affected by this Order, 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 at Rockville, Maryland this 18th day of September 1995.

For the Nuclear Regulatory Commission.
Hugh L. Thompson, Jr.,
Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 95-23805 Filed 9-25-95; 8:45 am]

BILLING CODE 7590-01-P

[Docket Nos. 50-272 and 50-323]

Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR-80 and DPR-82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant (DCPP) located in San Luis Obispo County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken offsite.

The proposed action is in accordance with the licensee's application dated May 5, 1995, and supplemental letters dated July 28, 1995, September 14, 1995 and September 19, 1995, for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage."

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

Paragraph (1) of 10 CFR 73.55(d), "Access Requirements," specifies that "licensee shall control all points of personnel and vehicle access into a protected area.* * *" It is specified in 10 CFR 73.55(d)(5) that "A numbered picture badge identification system shall