

time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be: whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 20th day of May 1996.

For the Nuclear Regulatory Commission.
James Lieberman,
Director, Office of Enforcement.

Appendix—Evaluation and Conclusions

On February 22, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$8,000 was issued to Madigan Army Medical Center (MAMC or Licensee) for violations identified during an NRC inspection and investigation. The Licensee responded to the Notice in two letters both dated March 21, 1996. The Licensee admitted the violations but requested mitigation of the proposed civil penalty based on actions taken by MAMC to identify and correct the violations.

Restatement of Violations Assessed a Civil Penalty

I. Violations Assessed a Civil Penalty

A. 10 CFR 35.25(a) (1) and (2) require, in part, that a licensee that permits the receipt, possession, use, or transfer of byproduct material by an individual under the supervision of an authorized user shall: (1) instruct the supervised individual in the licensee's written quality management program (QMP); and (2) require the supervised individual to follow the written QMP procedures established by the licensee.

Item 4 of the licensee's QMP specified, in part, that when computer calculations are performed, an individual who did not make the original calculations will check the dose calculation parameters.

Contrary to the above, the licensee did not meet the above requirements as specified in the following examples:

1. As of June 6, 1995, the licensee had not assured that individuals working under the supervision of an authorized user, i.e., the medical physicist and dosimetrist, were adequately instructed in the licensee's written QMP. Specifically, although the medical physicist and dosimetrist had signed a record indicating that they had reviewed department procedures, including the QMP, they had neither received specific instruction in the procedures incorporated in the QMP nor read each of the procedures.

2. Between February 1994 and May 1995, the licensee took no action to require or assure that individuals working under the supervision of an authorized user, i.e., the medical physicist and dosimetrist, were aware of, or were following, the licensee written QMP procedures established by the licensee. Specifically, computer calculations performed were not checked by an individual who did not make the original calculations. (01012)

B. 10 CFR 35.32(a) requires, in part, that the licensee establish and maintain a written

QMP to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user.

10 CFR 35.32(a) (3) and (4) require, in part, that the QMP include written policies and procedures to meet the objectives that: (1) final plans of treatment and related calculations for brachytherapy are in accordance with the applicable written directives and (2) that each administration of radiation from brachytherapy is in accordance with the applicable written directive.

Contrary to the above, between February 1994 and May 1995, the licensee's QMP did not include written procedures that met the above stated objectives. Consequently, in five cases involving patients undergoing brachytherapy treatment during this time period, incorrect data values were entered in a computerized treatment planning system used to develop final treatment plans. The entry of incorrect data resulted in errors in the calculated dose rates identified in final treatment plans, thus causing the administered doses to deviate substantially from the prescribed doses specified in the authorized users' written directives. (01022)

These violations represent a Severity Level II problem (Supplement VI). Civil Penalty—\$8,000

Summary of the Licensee's Request for Mitigation

MAMC responded to the Notice on March 21, 1996, admitting the violations but requesting mitigation of the proposed \$8,000 civil penalty based on its actions to identify and correct the violations. MAMC noted in its response that "NRC enforcement actions are intended to act as a deterrent against future violations and to encourage prompt identification and comprehensive correction of violations." MAMC then noted that it had identified the violations and made immediate extensive modifications to the radiation safety program and Quality Management Program (QMP) to ensure that the violations would not recur. MAMC described each of the corrective actions and stated that "processes have been implemented to ensure compliance with the QMP as well as a broad range of internal controls developed to prevent reoccurrence." MAMC stated that a standard civil penalty for a Severity Level II violation (\$4,000) should be sufficient, noting that this would more appropriately match the intent of NRC's Enforcement Policy and more accurately reflect MAMC's efforts in identifying and correcting the program deficiencies.

NRC Evaluation of Licensee's Request for Mitigation

The Licensee is correct that among the stated purposes of the NRC Enforcement Policy (NUREG-1600) is to encourage prompt identification and comprehensive correction of violations. In this case, normal application of the enforcement policy guidance in Sections VI.B.2.b and c did in fact result in credit for MAMC's identification of the violations and corrective actions. However, Section VII.A. of the Enforcement Policy provides that civil penalties may be escalated

to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. The violations which led to the misadministrations are of very significant regulatory concern to the NRC.

There were at least five cases involving patients undergoing brachytherapy treatment where MAMC administered radiation in excess of what was intended before MAMC discovered an error in its computerized treatment planning program. At least one of these patient misadministrations was later determined by medical consultants of the Licensee and the NRC to have had potential adverse health effects for the patient involved.

It was determined by NRC inspection and investigation that the misadministrations were caused, at least in part, by the Licensee's failure to assure that the MAMC staff was implementing the facility's Quality Management Program (QMP) as required and failure to adequately oversee the QMP. Additional training of the Licensee's personnel and increased management oversight could have prevented the misadministrations. These misadministrations were preventable.

The violations in this case were classified as a Severity Level II problem in recognition of this fundamental breakdown in the very program that is intended to prevent such misadministrations from occurring. The Enforcement Policy provides at Section VII.A.1(a) that discretion should be considered to escalate civil penalties in cases where problems are categorized at Severity Level I or II. As noted in Section I of the Enforcement Policy, enforcement action should be used not only to encourage identification and prompt, comprehensive correction of violations, but also as a deterrent to emphasize the importance of compliance with NRC requirements. While no violation is acceptable, the fact that these violations were preventable cannot be tolerated. In this case, discretion was clearly warranted to assess a civil penalty to MAMC, notwithstanding application of the identification and corrective action factors, to emphasize the importance of preventing significant misadministrations through supervision, training and management oversight. Considering the significance of the actual effects of the violations and their root causes, it was appropriate and wholly consistent with the Enforcement Policy guidance to deny mitigation, exercise discretion and assess a civil penalty of \$8,000.

NRC Conclusion

The NRC concludes that an adequate basis for mitigation of the civil penalty is not provided by the Licensee. The NRC also concludes that the proposed civil penalty of \$8,000 is appropriate and should be imposed by order.

[FR Doc. 96-13515 Filed 5-29-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 55-21849-EA; ASLBP No. 96-716-04-EA]

Emerick S. McDaniel; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Emerick S. McDaniel

Denial of Reactor Operator's License Application

This Board is being established as a result of an April 4, 1996 letter from NRC staff sustaining a denial of Mr. McDaniel's reactor operator's license application. The petitioner, Emerick S. McDaniel, requests a hearing in accordance with 10 C.F.R. § 2.103(b)(2).

The Board is comprised of the following administrative judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Peter A. Morris, 10825 South Glen Road, Potomac, MD 20854

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR § 2.701.

Issued at Rockville, Maryland, this 23rd day of May 1996.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 96-13512 Filed 5-29-96; 8:45 am]

BILLING CODE 7590-01-P

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 84th meeting on June 25-27, 1996, Room T-2B3, at 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Wednesday, December 6, 1995 (60 FR 62485).

The entire meeting will be open to public attendance.

The agenda for this meeting shall be as follows:

Tuesday, June 25, 1996—8:30 A.M. until 6:00 P.M.

Wednesday, June 26, 1996—8:30 A.M. until 6:00 P.M.

Thursday, June 27, 1996—8:30 A.M. until 4:00 P.M.

During this meeting, the Committee plans to consider the following:

A. Total System Performance Assessment 1995—The Committee will review comments from the NRC staff on the Department of Energy's Total System Performance Assessment 1995. Participation by the staffs of both DOE and NRC is anticipated.

B. Meeting with the Director, NRC's Division of Waste Management, Office of Nuclear Materials Safety and Safeguards—The Director will discuss items of current interest related to the Division of Waste Management programs which may include: progress at the Yucca Mountain site, the status of EPA's Yucca Mountain standards and NRC's high-level waste regulations, and the status of NRC draft technical guidance on expert elicitation.

C. Preparation of ACNW Reports—The Committee will discuss proposed reports, including: timeframes for regulatory concern, the use of expert elicitation, elements of an adequate low-level waste program, Committee priorities and task action plans, and biological effects from low-levels of ionizing radiation. The Committee may also prepare reports on topics discussed during this meeting.

D. Meeting with the NRC Commissioners—The Committee will discuss items of mutual interest with the Commissioners. Potential topics include: Issues and NRC activities associated with the National Research Council's Report, "Technical Bases for Yucca Mountain Standards," ACNW comments on High-Level Waste Prelicensing Program Strategy and Key Technical Issues, ACNW Priority Issues, health effects of low-levels of ionizing radiation, timespan for compliance of the proposed high-level waste repository at Yucca Mountain, Nevada, and the use of expert judgment in nuclear waste licensing.

E. Discussions with Dr. Dade Moeller, Moeller and Associates, Inc.—The Committee will discuss several topics of interest to the ACNW with Dr. Moeller including: the open market trading rule which would allow the operator of a facility that is releasing contaminants into the environment the option of reducing its own discharges or those of other sources in the same geographical area, the use of the linear-no-threshold model of response to doses of ionizing radiation, and defining a critical group to predict the anticipated effects of a waste repository.

F. DOE's Program Plan—The Committee will meet with representatives of the Department of Energy and the NRC staff to review DOE's current program for developing a high-level waste repository.

G. Specification of Critical Group and Reference Biosphere—The Committee will review options under consideration for specifying the critical group and reference biosphere to be used in a performance assessment of a nuclear waste disposal facility.

H. Time of Compliance in Low-Level Waste Disposal—The Committee will discuss options for setting a regulatory time of compliance for a low-level waste disposal facility. Participants may include representatives of the NRC staff, the DOE, and individual states.

I. Committee Activities/Future Agenda—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

J. Miscellaneous—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on September 27, 1995 (60 FR 49924). In accordance with these procedures, oral or written statements may be presented by members of the public, 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 Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Major if such