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.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 16th day of July 1996.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 96–18494 Filed 7–19–96; 8:45 am]

BILLING CODE 7590–01–M

[IA 96–043]

Order Prohibiting Involvement in NRC-Licensed Activities

In the Matter of Jesus N. Osorio (Home Address Deleted Under 10 CFR 2.790).

I

Jesus N. Osorio was employed as the Radiation Safety Officer (RSO) of NDT Services, Inc. (NDTS or Licensee) in Caguas, Puerto Rico, in 1993. NDTS holds License No. 52–19438–01, issued to the Licensee in 1987 and last amended by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30, on March 9, 1995. The license authorizes industrial gamma ray radiography in accordance with the conditions specified therein. Mr. Osorio was identified in consecutive amendments to NRC License No. 52–19438–01, dated January 12, 1992 and October 26, 1993, and in other licensing correspondence, as the RSO for NDTS.

II

On December 16–17, 1993, a special inspection of NDTS' activities was conducted at the Licensee's facility in Caguas, Puerto Rico, in response to notifications received in the NRC Region II office that on September 4, 1993, two contract radiographers [1] employed by NDTS had been unable to return a radiography source to its shielded position following radiographic operations, which resulted in the evacuation of the Sun Oil Company refinery located in Yabucoa, Puerto Rico, for several hours. Based on the results of the inspection, an investigation was initiated by the NRC Office of Investigations (OI) on December 30, 1993.

On December 21, 1995, OI completed its investigation and concluded, in part, that: (1) NDTS, with the knowledge and approval of the former RSO and former President, deliberately utilized radiographers untrained in NDTS operating and emergency procedures; and (2) NDTS, through the actions of the former RSO, provided the NRC with documentation that falsely certified the radiographers' training.

During an August 31, 1995 interview with OI, Mr. Osorio stated that he was aware that the radiographers needed training and that they were required to pass a proficiency test prior to working at the Sun Oil Company refinery. Mr. Osorio added that, prior to hiring the radiographers, he informed NDTS' former President that the radiographers would have to be trained and tested on NDTS equipment. Nonetheless, Mr. Osorio did not train the radiographers because they left for their accommodations and he was tired and went home, although he knew that they would work their shift without the required training. As to the false training documentation, Mr. Osorio stated that he knew he signed false documentation and that such falsification constituted a violation of NRC regulations, but he signed the documentation because he ''needed to have something.''

Based on the OI conclusions, the NRC further concluded that during the December 16–17, 1993 inspection, the former RSO orally represented to an NRC inspector that he demonstrated the safe use of the NDTS radiography equipment prior to allowing two contract radiographers to operate the equipment on September 3, 1993, when he knew that he had not conducted such a demonstration.

On February 15, 1996, Mr. Osorio was contacted by telephone and initially informed of the inspection and investigation results and was provided the opportunity to participate in a predecisional enforcement conference. During this telephone conversation, Mr. Osorio declined to attend this conference. By letter dated February 20, 1996, Mr. Osorio was transmitted the Inspection Report and the synopsis of the OI investigation and again offered the opportunity to attend a conference. To date, Mr. Osorio has not responded to the February 20, 1996 letter. No conference has been conducted with him; however, on May 16, 1996, a teleconference was conducted with Mr. Osorio to further discuss this case. Additionally, on February 29 and March 4, 1996, predecisional enforcement conferences were conducted with one of the contract radiographers, and NDTS, respectively.

Based on the information gathered during the inspection, investigation, predecisional enforcement conferences, and subsequent interviews in this case, the NRC has determined that: (1) Mr. Osorio deliberately permitted unqualified radiographers to perform radiography for NDTS on September 4, 1993, in that he knew the radiographers had not been trained in NDTS procedures or equipment; (2) on December 16, 1993, Mr. Osorio provided an NRC inspector with written certification of the qualifications of the two contract radiographers, dated September 3, 1993, which falsely indicated that the radiographers had been qualified based on records obtained from their principal employer and by the experience demonstrated by the contract radiographers to him; and (3) on December 16, 1993, Mr. Osorio provided false oral statements to an NRC inspector indicating that he had demonstrated the safe use of the NDTS radiography equipment to the radiographers on September 3, 1993, when, in fact, he had not conducted such a demonstration.

III

Based on the above, the staff concludes that Mr. Osorio engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 34.31(a) by deliberately failing to utilize trained and qualified individuals during the conduct of radiographic operations at the Sun Oil Company refinery on September 4, 1993. Mr. Osorio also violated 10 CFR 30.10(a)(2), and caused the Licensee to be in violation of 10 CFR 30.9, by deliberately providing materially inaccurate and incomplete information to the NRC. As the former RSO of NDTS, Mr. Osorio was responsible to assure that NDTS conducted activities in accordance with NRC requirements and the NDTS radiation safety program. The NRC must be able to rely on the Licensee, its officials and employees to comply with NRC requirements, including the requirements to train radiographers in accordance with NRC regulations and to provide complete and accurate information to the NRC. Mr. Osorio's deliberate misconduct in causing the Licensee to violate 10 CFR 34.31(a), and his deliberate submission to the NRC materially inaccurate and incomplete

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[1] The radiographers involved in the event were contracted by NDTS from National Inspection and Consultants (NIC), an Agreement State licensee in Florida. While no written contract was established to outline the scope and conditions of work, based on the information available, the NRC concluded that the work performed on September 4, 1993, was performed under the provisions of the NDTS license.

information, are violations of 10 CFR 30.10 and have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

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 will be protected if Mr. Osorio were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Osorio be prohibited from any involvement in NRC-licensed activities for a period of five years, and, if he is currently involved with another licensee in NRC-licensed activities, he must, following the effective date of this Order, cease such 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. Additionally, Mr. Osorio is required to notify the NRC of his first employment involving NRC-licensed activities within a period of five years following the five-year prohibition period.

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, and 10 CFR 30.10, *it is hereby ordered that:*

A. For a period of five years from the effective date of this Order, Jesus N. Osorio is prohibited from engaging in, or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities are those activities which 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. This prohibition includes, but is not limited to: (1) Using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising, directing, or serving as Radiation Safety Officer for any licensed activities conducted within the jurisdiction of the NRC.

B. At least five days prior to the first time that Jesus N. Osorio engages in, or exercises control over, NRC-licensed activities within a period of five years following the five-year prohibition in Section IV.A above, a, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Jesus N. Osorio understands NRC requirements, that is committed to compliance with NRC requirements, and that provides a basis as to 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. Osorio of good cause.

V

In accordance with 10 CFR 2.202, Jesus N. Osorio 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, D.C. 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. Osorio 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 II, Suite 2900, 101 Marietta Street, Atlanta, GA 30323, and to Jesus N. Osorio, if the answer or hearing request is by a person other than Jesus N. Osorio. If a person other than Jesus N. Osorio 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 Jesus N. Osorio, or another 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.

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.

Dated at Rockville, Maryland, this 16th day of July 1996.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 96–18493 Filed 7–19–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–369 and 50–370]

Duke Power Company; McGuire Nuclear Station, Unit Nos. 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg, North Carolina.

Environmental Assessment

Identification of the Proposed Action

By letter dated March 4, 1996, Duke Power Company (DPC) submitted a proposal for amendments to the Facility Operating Licenses that would allow the McGuire Units 1 and 2 Containment Airborne Particulate Radiation Monitors (CAPRMs, 1/2 EMF38(L)) to be reclassified in the Final Safety Analysis Report (FSAR) as non-seismic Category I. During a DPC engineering review of the seismic classification of these CAPRMs, it was determined that these monitors are not seismic Category I. Furthermore, DPC had documents that showed that these monitors are not required nor were they ever intended to be seismically qualified. Also, in a DPC letter to the NRC dated March 25, 1981, DPC further stipulated that the CAPRMs were not safety related. However, none