customer satisfaction and how NRC can improve its programs.

Submit, by May 13, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, (703) 321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, (1) (800) 303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at (703) 487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at (1) (800) 397–4209, or within the Washington, DC, area at (202) 634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 7th day of March, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–5992 Filed 3–12–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 030–32202; License No. 11–27316–01; EA 95–148]

Diamond H Testing Company; Pocatello, Idaho; Order Imposing Civil Monetary Penalty

I

Diamond H Testing Company (DHT, Licensee) is the holder of NRC Materials License No. 11–27316–01 issued by the Nuclear Regulatory Commission (NRC or Commission). The license authorizes the Licensee to possess sealed radioactive sources and to utilize those sources to conduct industrial radiography in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted June 16 through July 12, 1995, following the Licensee's report of an incident that occurred during radiography activities in Hawaii. The results of this inspection, documented in a report issued on September 11, 1995, indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A predecisional enforcement conference was conducted on September 26, 1995, in the NRC's Arlington, Texas, office. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $8,000 was served upon the Licensee by letter dated October 25, 1995. The Notice described the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in two letters both dated November 15, 1995 (Reply to a Notice of Violation and Answer to a Notice of Violation). In its responses, the Licensee admitted that portions of the regulations were violated, but denied that it should be held responsible for the violations because they resulted from independent decisions made by one of its radiographers, and stated that certain factors warranted mitigation of the proposed civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as described in the Notice, that the Licensee is fully responsible for the violations committed by its radiographer, and that the penalty proposed for the violations designated in the Notice should be mitigated by $3,000. Thus, a civil penalty in the amount of $5,000 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $5,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 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. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Section I of the Notice referenced in Section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 5th day of March 1996.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusions

On October 25, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $8,000 was issued to Diamond H Testing Company (DHT or Licensee) for violations identified during an NRC inspection. The Licensee responded to the Notice in two letters both dated November 15, 1995. The Licensee admitted that portions of the regulations were violated, but denied that it should be held responsible for the violations because they resulted from independent decisions made by one of its radiographers, and stated that certain factors warranted mitigation of the proposed civil penalty.

Restatement of Violations I.A, I.B, and I.C

A. 10 CFR 34.22(a) requires, in part, that, during radiographic operations, the sealed source assembly be secured in the shielded position each time the source is returned to that position.

Contrary to the above, on two occasions on June 14, 1995, during radiographic operations at the Hawaiian Electric Company Kahe Unit 5 Power Plant, a licensee radiographer did not secure the sealed source assembly in the shielded position after returning the source to that position. (01012)

B. 10 CFR 34.33(a) requires that the licensee not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, the individual wears a direct-reading pocket dosimeter, an alarm ratemeter, and either a film badge or a thermoluminescent dosimeter.

Contrary to the above, on June 14, 1995, during radiographic operations at the Hawaiian Electric Company Kahe Unit 5 Power Plant, a licensee radiographer did not wear an alarm ratemeter while conducting radiographic operations. (01022)

C. 10 CFR 34.43(b) requires, in part, the licensee to ensure that a survey with a calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference of the radiographic exposure device and any source guide tube.

Contrary to the above, on June 14, 1995, during radiographic operations at the Hawaiian Electric Company Kahe Unit 5 Power Plant, a licensee radiographer did not perform an adequate survey after a radiographic exposure to determine that the sealed source had been returned to its shielded position in that the survey only included a portion of the source guide tube. (01032)

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

Summary of Licensee's Response to Violations I.A, I.B, and I.C

The Licensee argued that there are several parts to each of the cited requirements for the above violations and that only one part of each requirement was violated. In addition, the Licensee denied that it should be held responsible for the violations because they resulted from independent decisions made by one of its radiographers.

DHT did not admit responsibility for the violations, all of which DHT asserts resulted from the independent actions of the same radiographer who, DHT states, was experienced and appropriately trained. DHT also noted that the NRC found no negligence on DHT's part with respect to its radiation safety program or training of employees.

NRC Evaluation of the Licensee's Response to Violations I.A, I.B, and I.C

The sections of 10 CFR Part 34 cited in the Notice set forth a number of requirements, and, in some cases, more than one requirement is contained in the same subsection or paragraph. As an NRC licensee, DHT is required to comply with each and every requirement in every instance in which a requirement applies. In this case, DHT failed to ensure that: (1) The sealed source was secured in the camera, (2) an adequate survey was performed, and (3) an alarm ratemeter was worn during radiographic operations; and the Licensee did not dispute the fact that these violations occurred. Therefore, the NRC concludes that the violations occurred as stated.

The NRC strongly disagrees with, and is concerned about, DHT's failure to accept responsibility for the violations. The Commission resolved the responsibility issue between a licensee and its employees in its decision concerning the Atlantic Research Corporation case, CLI–80–7, dated March 14, 1980, a copy of which is enclosed. In that case, the Commission stated, in part, that ''a division of responsibility between a licensee and its employees has no place in the NRC regulatory regime which is designed to implement our obligation to provide adequate protection to the health and safety of the public in the commercial nuclear field.''

The NRC does not specifically license the management or the employees of a company; rather, the NRC licenses the entity. The licensee uses, and is responsible for the possession of, licensed material. The licensee is the entity that hires, trains, and supervises the employees. All licensed activities are carried out by employees of licensees and, therefore, all violations are committed by employees of licensees. The licensee obtains the benefits of the employees good performance and suffers the consequences of their poor performance. Not holding the licensee responsible for the action of its employees, whether negligent or willful, is tantamount to saying that the licensee is not responsible for the use or possession of licensed material. If the NRC accepted DHT's position: (1) The NRC would have little ability to ensure its requirements on licensees were met and the public health and safety were protected; and (2) there would be little incentive for licensees to monitor their activities to assure compliance. Therefore, the NRC holds licensees responsible for the actions of their employees (''General Statement of Policy and Procedure for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600, Section VI.A). With regard to the DHT's argument that the NRC found no negligence on DHT's part and found its radiation safety and training programs adequate, the NRC considers this irrelevant to whether a violation occurred. As to civil penalties, Section VI.B of the Enforcement Policy provides that ''the lack of management involvement may not be cause to mitigate a civil penalty.''

Summary of the Licensee's Request for Mitigation

The Licensee offered numerous arguments for mitigation of the proposed penalty. Below is a summary listing of the Licensee's arguments that are related to its request for mitigation, some of which have been consolidated. The NRC's evaluation follows each argument.

1. DHT argued that it should be given credit for identifying the violations, in accordance with Section VI.B.2 of the NRC Enforcement Policy (Policy).

NRC Evaluation

DHT correctly notes that credit may be given for identification through an event. The NRC agrees that the licensee responded promptly and thoroughly to the event, and that the licensee's investigation was important in determining the actual circumstances that resulted in the event. However, the intent of this provision is to allow credit only in situations where a licensee's investigation following an event uncovers violations and problems that were not apparent (for example, where a licensee uncovers programmatic weaknesses in procedures or training or design of equipment and takes action to correct those in addition to taking action to correct the direct causes of the event).

The Policy notes that ''ease of discovery'' and ''licensee self-monitoring effort'' are two of the factors that will be considered. In the case at hand, the NRC believes that the violations that resulted in the incident were easily discovered and were not identified as a result from a DHT self-monitoring effort, such as an audit or a program review. The overriding Policy principle in this case is to emphasize the importance of preventing events that threaten the safety of employees or members of the public. After considering the guidance in Section VI.B.2.b and in particular sub paragraph (iv) the NRC concludes that the Licensee did not provide an adequate basis for mitigating the civil penalty based on DHT's identification.

2. DHT argued that the violations do not appear to fit any of the examples of Severity Level II violations in Supplement VI, and that they appear to fit Example C.7 in Supplement VI (''A breakdown in the control of licensed activities involving a number of violations . . .''). The Licensee argued therefore that the violations should have been classified at Severity Level III.

NRC Evaluation

As noted in Section IV of the Policy, the examples in the supplements are neither exhaustive nor controlling. The NRC noted in the letter proposing the civil penalty that each of the violations that formed the basis for the civil penalty could have been classified at Severity Level III (Supplement VI, C.8) and, therefore, could have been assessed separate penalties. Factoring in the significance of the violations, their relationship to a single event, and the involved willfulness on the part of the radiographer with respect to at least one of the violations, the NRC utilized its discretion to consider the violations collectively and to treat them at the next highest severity level, Severity Level II.

3. DHT argued that compliance was achieved in a major portion of all three of the regulations, substantiating that the radiographer had knowledge of the requirements and was not operating under a total disregard for the safety requirements, but rather under a potentially significant lack of attention or carelessness toward licensed activities. In addition, DHT contends that the violations appear to fit the criteria in Section VII.B.1.(d)(iii) for enforcement discretion because the violations appeared to be an isolated act of an employee without management involvement.

NRC Evaluation

The NRC agrees with DHT's views concerning the radiographer's conduct. However, the Licensee's argument is not applicable with regard to mitigation of the civil penalty. As to DHT's contention that the violations appear to fit the criteria in Section VII.B.1.(d)(iii), the NRC disagrees with the Licensee because Section VII.B.1.(d)(iii) concerns licensee-identified Severity Level IV violations, not Severity Level II violations. Moreover, a radiographer, for purpose of the Enforcement Policy, is not a ''low-level individual.'' Therefore, enforcement discretion based on Section VII.B.1. does not apply to this case.

4. DHT cited several corrective actions which went beyond those described at the predecisional enforcement conference and therefore were not considered in the decision to propose a civil penalty. The additional corrective actions cited by DHT included 40-hour (versus 8-hour) refresher training for all radiography personnel who have been with the company for more than 1 year and are due for annual refresher training.

NRC Evaluation

These corrective actions were taken by the Licensee after the conference and were not factored into the decision-making process. Although the NRC gave the Licensee credit for its corrective actions in determining the proposed civil penalty amount, the NRC considers these additional corrective actions noteworthy because they go beyond what most small radiography licensees commit to and are somewhat beyond our expectations, given the circumstances of this case. Therefore, the NRC believes that discretion should be utilized to mitigate the proposed civil penalty by $3,000.

NRC Conclusion

The NRC has considered all of the arguments the Licensee made and concluded that the violations occurred as stated in the original Notice and that they were appropriately classified as a Severity Level II problem. However, given the extensive corrective actions committed to by this Licensee, particularly the additional training of its radiography personnel, the NRC has determined that a basis exists for exercising discretion to reduce the proposed penalty by $3,000. Consequently, a civil penalty in the amount of $5,000 should be imposed.

EVALUATION OF VIOLATIONS NOT ASSESSED A CIVIL PENALTY

Of the violations not assessed a civil penalty, Diamond H Testing Company (DHT or Licensee) neither admitted nor denied Violations II.A and Violation II.B. However, the Licensee again argued that the violations were the result of independent actions by its radiographer. In addition, the Licensee questioned the validity of citing 10 CFR 20.1801 with regard to Violation II.B.

Restatement of Violation II.B

B. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, during an 8 to 10 minute period between approximately 9:45 p.m. and 10:00 p.m. on June 14, 1995, the licensee did not secure from unauthorized removal or limit access to a 48.2 curie iridium-192 sealed source in a Gamma Century exposure device located on the 9th floor of the Hawaiian Electric Company Kahe Unit 5 Power Plant, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. (03014)

This is a Severity Level IV violation (Supplement IV).

Summary of Licensee's Response to Violation II.B

The Licensee questioned the validity of including 10 CFR 20.1801 as applying to the circumstances in question. The Licensee stated that ''It [the exposure device] had been left for a period of 8 to 10 minutes when the radiographer went to notify the RSO [radiation safety officer] of the situation.'' DHT's position is that 10 CFR 20.1801, which was cited in conjunction with 10 CFR 20.1802, should not apply because the radiography camera was not ''stored'' at the field site location.

NRC Evaluation of Licensee's Response

The Licensee admits that the camera was left in an unrestricted area and neither secured the material from unauthorized removal nor maintained constant surveillance of the licensed material. Therefore, while the NRC agrees with DHT that 10 CFR 20.1801 may not have applied, the NRC concludes that Licensee failed to comply with these requirements.

NRC Conclusion

Based on the above, the NRC concludes that the licensee has not provided an adequate basis for withdrawal of the Violation II.B. Therefore, the Violation II.B occurred as stated in the Notice.

[FR Doc. 96–5993 Filed 3–12–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Nuclear Generating Station located in Coffey County, Kansas.

The proposed amendment would revise Technical Specification Figure 2.1–1, ''Reactor Core Safety Limit—Four Loops in Operation,'' Table 2.2–1, ''Reactor Trip System Instrumentation Setpoints,'' and Table 3.2–1, ''DNB Parameters,'' to allow operation of the Wolf Creek Nuclear Generating Station (WCGS) with decreased indicated reactor coolant system (RCS) flow.

The requested change is required to allow WCGS to operate at full rated power following restart after the eighth refueling outage should the indicated flow be below the current minimum measured flow.

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.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or