employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Johnson shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Johnson of good cause.

V

In accordance with 10 CFR 2.202, Mr. Johnson 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. Johnson 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, Rulemakings and Adjudications Staff, 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 I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Johnson if the answer or hearing request is by a person other than Mr. Johnson. If a person other than Mr. Johnson requests a hearing, that person shall set forth with particularity the manner in which that person's 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 Mr. Johnson 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), Mr. Johnson 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 28th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–12182 Filed 5–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 98–001]

Mr. Albert M. Nardslico, Jr.; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Albert M. Nardslico (Mr. Nardslico) was formerly employed as a contractor employee at the Niagara Mohawk Power Corporation (NMPC) Nine Mile Point nuclear facility as a computer programmer. NMPC holds Facility License Nos. DPR–63 and NPF–69 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize NMPC to operate the Nine Mile Point facilities, Units 1 and 2, in accordance with the conditions specified therein.

II

In May 1996, NMPC initiated an investigation into whether Mr. Nardslico and others were involved in the alteration of a computer code used to select individuals for random drug and alcohol testing. Based on the evidence developed during the NMPC investigation, as well as a subsequent review by the NRC Office of Investigations (OI), OI concluded that Mr. Nardslico and another contractor computer programmer intentionally altered the fitness-for-duty (FFD) computer program to ensure that certain individuals (including themselves) would be excluded from random FFD screening. Specifically, a patch had been inserted into the computer program to ensure certain individuals would not be selected. Moreover, the two individuals planned and executed a scheme (and a number of precautions) to elude detection and prevent tracing.

These actions caused NMPC to violate 10 CFR 26.24, which requires that individuals be tested for drugs and alcohol in a statistically random and unpredictable manner. As a result of this violation, Mr. Nardslico, the other contractor employee involved in planning the scheme, and others, were prevented from being selected for random FFD testing. In addition, during the time in which his name was excluded from random selection, Mr. Nardslico had access to the site protected area, which was also at a time when Mr. Nardslico may have been using marijuana offsite. (Mr. Nardslico admitted, during the predecisional enforcement conference in the NRC Region I office on February 13, 1998, and during a June 21, 1996 interview with NMPC investigators, that he had used marijuana while employed at Nine Mile Point. While he did not recall the periods of such use, he was unable to confirm that he did not use marijuana while his name had been excluded from the FFD testing pool.)

During his interviews with NMPC, as well as during the predecisional enforcement conference with the NRC, Mr. Nardslico denied that he was involved in the alteration of the computer program. Notwithstanding Mr. Nardslico's denials, another contractor computer programmer, who had admitted his involvement in the alteration, implicated Mr. Nardslico as also being involved in the alteration. Specifically, in transcribed interviews under oath, the other contract computer programmer indicated: (1) That the corruption of the FFD computer code was a joint effort of him and Mr. Nardslico; (2) that he and Mr. Nardslico

in the July/August 1993 timeframe ''fleshed out'' a way to make changes to the fitness for duty program through the use of the ''C'' program; (3) that Mr. Nardslico had suggested adding additional persons'' names to the scheme to ''disperse'' suspicion; and (4) that he had observed Mr. Nardslico use marijuana on at least one occasion subsequent to the September 1993 code corruption. In addition, Mr. Nardslico admitted that he was aware of the computer code alteration, was also aware that his name was one of those eliminated from the FFD testing pool as part of the alteration, and was further aware that he was subject to FFD random testing because of his having access to the Nine Mile Point site. Nonetheless, Mr. Nardslico did not take appropriate action to remedy the situation or ensure that his management was made aware that the computer code had been altered, as he admitted during the predecisional enforcement conference.

Finally, some of Mr Nardslico's statements on this matter lack credibility. For example, in his first interview with NMPC on May 20, 1996, he denied any involvement in, or knowledge of, the alteration of the FFD computer code; however, in a subsequent interview with NMPC on June 21, 1996, as well as during the predecisional enforcement conference with the NRC on February 13, 1998, Mr. Nardslico admitted his knowledge of the alteration of the computer code. Also, although Mr. Nardslico indicated that he did inform a licensee Purchasing Supervisor of the alteration shortly after he stated he became aware of it, that individual denied Mr. Nardslico's assertion, and Mr. Nardslico admitted that he did not raise this issue with anyone else in the NMPC organization. In addition, although Mr. Nardslico indicated that he was not familiar with the ''C'' programming language, which was the language used for the FFD computer code, his resume listed the ''C'' language as one of the languages with which he was familiar, and others testified that Mr. Nardslico was familiar with this language. Further, Mr. Nardslico, during his interviews with NMPC, expressed a willingness to enter into business relationships with the other individual who was involved with the alteration of the computer code, while at the same time indicating that he was disturbed by the other individual's actions and lack of judgment.

III

Based on the above, the NRC has concluded that Mr. Nardslico engaged in deliberate misconduct. Mr. Nardslico's actions constitute a violation of 10 CFR 50.5(a)(1), which prohibits an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In this case, Mr. Nardslico caused the Licensee to be in violation of 10 CFR 26.24. Specifically,

> 10 CFR Part 26.24, requires, in part, that as a means to deter and detect substance abuse, the licensee shall implement a testing program that includes unannounced drug and alcohol testing that is to be imposed in a statistically random and unpredictable manner so that all persons in the population subject to the testing shall have an equal probability of being selected and tested.
>
> Contrary to the above, at some time prior to May 1996, the actions of Mr. Nardslico and another contractor computer programmer resulted in the licensee maintaining an altered FFD computer program used to ensure that individuals were tested for drugs and alcohol in a statistically random and unpredictable manner, resulting in certain individuals (including Mr. Nardslico) being excluded from random FFD screening. As a result, for a indeterminate period prior to May 1996, individuals were selected for testing in a manner that was not statistically random and unpredictable.

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements. Mr. Nardslico's involvement in the altering of the FFD program, including his collusion with another contractor employee to hide that alteration, constitute a deliberate violation of Commission regulations, and by doing so, raises serious doubt as to whether he can be relied upon to comply with NRC requirements, and raises doubt about his trustworthiness and reliability.

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 Mr. Nardslico were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Nardslico be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, for a period of three years after the five year period of prohibition has expired, Mr. Nardslico is required to notify the NRC of his acceptance of each employment offer involving NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nardslico's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to Sections 103, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *it is hereby ordered, effective immediately, that:*

A. Albert M. Nardslico Jr. is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. NRC-licensed activities are those activities that 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.

2. For a period of three years after the five year period of prohibition has expired, Mr. Nardslico shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Nardslico shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Nardslico of good cause.

V

In accordance with 10 CFR 2.202, Mr. Nardslico 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. Nardslico 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, Rulemakings and Adjudications Staff, 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 I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Nardslico if the answer or hearing request is by a person other than Mr. Nardslico. If a person other than Mr. Nardslico requests a hearing, that person shall set forth with particularity the manner in which that person's 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 Mr. Nardslico 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), Mr. Nardslico 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 28th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–12181 Filed 5–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282, 50–306]

Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2); Exemption

I

Northern States Power Company (NSP, the licensee) is the holder of Facility Operating License Nos. DPR–42 and DPR–60, which authorize operation of Prairie Island Nuclear Generating Plant, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors located at the licensee's site in Goodhue County, Minnesota.

II

In its letter dated March 6, 1998, the licensee requested an exemption from specific requirements of Title 10 of the Code of Federal Regulations Part 50, Section 60, and Appendix G. Specifically, NSP proposed to use American Society of Mechanical Engineers (ASME) Code Case N–514 to permit setting the pressure setpoint of each unit's overpressure protection system (OPPS) so that the pressure-temperature (P-T) limits required by 10 CFR Part 50, Appendix G, could be exceeded by 10 percent during a low temperature pressure transient.

The NRC has established requirements in 10 CFR Part 50 to protect the integrity of the reactor coolant system pressure boundary. As a part of these, 10 CFR Part 50, Appendix G, requires that P-T limits be established for reactor pressure vessels during normal operation, including anticipated operational occurrences and vessel hydrostatic testing and as stated in Appendix G, ''The appropriate requirements on * * * the pressure-temperature limits * * * must be met for all conditions.'' In order to ensure these P-T limit curves are not exceeded and provide pressure relief during low temperature overpressurization events, pressurized-water reactor licensees have installed protection systems (OPPS) as part of the reactor coolant system pressure boundary. NSP is required as part of the Prairie Island Units 1 and 2 Technical Specifications to develop, update, and submit reactor vessel P–T limits and OPPS setpoints for NRC review and approval.

By letter dated March 6, 1998, NSP submitted an exemption request to enable the use of ASME Code Case N–514 as an alternative method for determining the OPPS pressure setpoint. NSP determined that the exemption request from the provisions of 10 CFR 50.60 and Appendix G was necessary since these regulations require, as noted above, that the reactor vessel conditions not exceed the P-T limits established by Appendix G. In referring to 10 CFR 50.12 on specific exemptions, NSP cited special circumstances as stated in 10 CFR 50.12(a)(2)(ii) on achieving the underlying purpose of the regulations as its basis for requesting this exemption.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The underlying purpose of 10 CFR Part 50, Appendix G, is to establish fracture toughness requirements for the RCS pressure boundary to provide adequate margins of safety during any condition of normal operation. NSP stated that the OPPS provides a physical means of protecting the vessel by not exceeding the limits. NSP proposed that establishing the OPPS pressure setpoint per the N–514 provisions such that the vessel pressure would not exceed 110 percent of the P-T limit allowables would still provide an acceptable level of safety and mitigate the potential for an inadvertent actuation of the OPPS. The finding of an ''acceptable level of safety'' while using N–514 was made based on the conservatisms that have been explicitly incorporated into the procedure for developing the P-T limit curves. This procedure, referenced from Appendix G to Section XI of the ASME Code, includes the following conservatisms: (1) A safety factor of 2 on the pressure stresses, (2) a margin factor applied to the determination of RT_{NDT}