recipients should apply a four-factor test to decide what steps are necessary and reasonable to provide meaningful access to their programs and activities for persons with LEP. Once the recipient has identified what language services, if any, are reasonable, the recipient should prepare a written policy on language assistance for persons with LEP (an ''LEP policy''). This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available language lines to obtain interpreter services.

II. The Four-Factor Analysis

''Reasonable steps to ensure meaningful access'' will vary depending on a number of factors. NHPRC recipients should apply the following four factors to the various contacts that they have with the public to decide what reasonable steps they should take to ensure meaningful access for persons with LEP. This balancing test preserves recipient management discretion and flexibility in determining how to best address the language needs of the LEP communities when deciding what documents to translate, and when oral translation is necessary.

A. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of persons with LEP eligible to be served or encountered by the recipient in carrying out its operations. *The greater the number or proportion of persons with LEP, the more likely language services are needed.*

B. The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, in some fashion, the frequency with which they have contact with LEP language groups. The more frequent the contact, the more likely that language services are needed. The steps that are reasonable for a recipient that serves one person with LEP a year may be very different from those expected from a recipient that serves several persons with LEP each day. For instance, a NHPRC-supported project to arrange and describe a collection consisting primarily of documents originally created in the Spanish language could provide finding aids that are linguistically accessible for Spanish persons with LEP.

C. The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. A recipient should determine if a denial or delay of access to services or information could have serious implications for the LEP individual. This factor weighs heavily in favor of providing language services in situations where the failure to provide such services could have an adverse effect on health, safety, economic security, and other critical areas. Typically, recipients of NHPRC funds provide significant cultural and societal services but such services do not rise to the same level of importance as do the previously mentioned critical areas. In such circumstances, the resources available to the recipient and the cost of providing the services will weigh more heavily in considering what, if any, language services to provide to frequently encountered LEP language groups.

D. The Resources Available to the Recipient

A recipient's level of resources may have an impact on the nature of the steps it should take. Smaller recipient entities with more limited budgets are not expected to provide the same level of language services as larger recipient entities with larger budgets. However, such small recipients should still consider what language services are needed and what they are able to provide. Resource issues can sometimes be minimized by technological advances and sharing of resources and translations.

III. Application of the Four Factors to NHPRC Recipients

NHPRC recipients include, but are not limited to state, county, and local historical societies and archives; universities; colleges; and libraries. All aspects of a program or activity that receives NHPRC assistance are covered by Title VI. Thus, recipient activities vary widely and the results of the application of the four factors varies as well.

NHPRC recipients' Title VI obligations in many cases will be satisfied by making available oral language assistance or commissioning translations on an as-needed basis. There are many circumstances where, after an application and balancing of the four factors noted above, Title VI would not require translation at all. For instance, based on a typical application of the nature and importance of the activity to persons with LEP and the resources available, Title VI does not require an archivist to translate archived collections, but it does require the implementation of appropriate language assistance measures to permit a person with LEP to have access to publicly accessible archives.

IV. Legal Background

Further legal background for this guidance can be found in the Department of Justice Policy Guidance document, titled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency Policy Guidance'', reprinted at 65 FR 50123 (August 16, 2000).

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NUCLEAR REGULATORY COMMISSION

[IA–01–021]

In the Matter of Mr. Virgil J. Hood, Sr.; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Virgil J. Hood, Sr. was the President and Radiation Safety Officer (RSO) of Moisture Protection Systems Analysts, Inc. (MPSA or the Licensee) formerly located at 1350 Beverly Road, Suite 223, McLean, Virginia 22101. The Licensee was the holder of Byproduct Materials License No. 45–24851–02 (the license), which was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on June 19, 1986 and renewed on January 30, 1992. The license authorized MPSA to possess byproduct material, i.e., a Seaman Nuclear Corporation Model R–50 portable roofing gauge containing a nominal 40 millicuries (mCi) of Americium-241, for use in measuring moisture density of roof surfaces in accordance with the conditions specified in the license. On April 20, 1998, the Licensee's license was revoked.

II

Between December 31, 1997 and January 31, 2001, the NRC Office of Investigations (OI) conducted an investigation to determine the location of a moisture density gauge containing licensed material after the Licensee failed to pay the NRC annual license fee

for fiscal year 1996, and had vacated the premises listed on its license without prior notice to the NRC. These actions by the Licensee had resulted in the NRC issuing an Order Suspending License (Effective Immediately) to MPSA (Order Suspending License) on May 15, 1997. The Order Suspending License imposed certain requirements upon the Licensee and required a response from the Licensee. Subsequently, after the Licensee failed to submit the required answer to the Order Suspending License, a Notice of Violation and Proposed Imposition of Civil Penalty—$5,500, and Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License (Order Revoking License) were issued to MPSA revoking its license on April 20, 1998. The Order Revoking License required that the Licensee maintain licensed material in safe storage, immediately notify the NRC of its current business location and status of licensed material, test the gauge for leak tightness, and transfer all licensed material to an authorized recipient within 30 days of the Order Revoking License. To date, the Licensee has failed to respond to the Order Revoking License. On May 5, 2000, the NRC was notified that a portable moisture density gauge containing licensed material had been received at a landfill. The gauge was a Seaman Nuclear Corporation Model No. R–50 portable moisture density gauge, and was labeled as belonging to MPSA.

The Licensee's license dated June 19, 1986, provides that the Licensee shall conduct its program in accordance with the statements, representations, and procedures contained in its application dated June 10, 1986. Mr. Virgil J. Hood, Sr. is identified as the MPSA President and as being chiefly responsible for the Radiation Safety Program in the MPSA Application for Material License dated June 10, 1986. As President and the individual responsible for the Radiation Safety Program, Mr. Hood was responsible for the safe handling of licensed material and for ensuring that licensed activities were conducted in accordance with NRC requirements. In addition, in signing as the Certifying Officer on the 1986 application and the application for license renewal dated January 23, 1992, Mr. Hood attested that the moisture density gauge would be stored at one location (1350 Beverly Road, Suite 223, McLean VA 22101 in the renewal), that he was responsible for the radiation safety program, that the gauge was being stored in a locked enclosure that does not allow access by unauthorized persons, that leak tests would be performed, and, if there was need to dispose of the meter, that it would be returned to Seaman Nuclear Corporation. In signing the application for license, Mr. Hood certified that the MPSA program would conform with 10 CFR parts 30, 32, 33, 34, 35, 40, and all information in the application.

The Orders described above were sent to Mr. Virgil J. Hood, Sr. as President of MPSA. As President and the only user of the gauge identified in the application and license, Mr. Hood was required to respond to the Orders. This response should have included immediately notifying the NRC of its current business location and the status of the licensed material, submitting the results of testing the gauge for leak tightness, and confirming the transfer of all licensed material to an authorized recipient.

The NRC's investigation and review of this matter has determined that Mr. Hood engaged in deliberate misconduct that caused MPSA to be in violation of the Order Revoking License dated April 28, 1998, and 10 CFR 20.2201(a)(1)(i). Specifically, 10 CFR 30.34(a) requires, in part, that each license issued pursuant to the regulations in this part shall be subject to all the provisions of the Atomic Energy Act, now or hereafter in effect, and to all valid rules, regulations and orders of the Commission. As President and RSO for the Licensee, Mr. Hood did not respond in any manner to, or comply with, the requirements of the Order Revoking License to maintain the licensed material in safe storage, immediately notify the NRC of the Licensee's current business location and the status of the licensed material, test the sealed source for leak tightness, transfer the licensed material to an authorized recipient within 30 days of the date of the Order Revoking License, or respond to the violations outlined in the Notice.

Although during the investigation, numerous additional attempts were made to contact Mr. Hood, including the issuance of two subpoenas for compelled interviews at NRC headquarters on September 16, 1998, and December 3, 1999, Mr. Hood failed to appear for the interviews and did not attempt to communicate with the NRC or respond to the Order Suspending License or Order Revoking License.

In addition, 10 CFR 20.2201(a)(1)(i) requires, in part, that each licensee report by telephone immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C to part 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas. The NRC concluded that Mr. Hood's activities caused the Licensee to be in violation of 10 CFR 20.2201(a)(1)(i) in that, since May 10, 2000, as President and RSO, Mr. Hood failed to report by telephone that 40 mCi of Americium-241, a quantity greater than 1,000 times the quantity specified in Appendix C to 10 CFR Part 20, contained in a Seaman Nuclear Corporation Model No. R–50 portable moisture density gauge, Serial Number 8064, was lost, stolen, or missing. In May 2000, a Seaman Nuclear Corporation Model No. R–50 portable moisture density gauge, bearing Serial Number 8064, was found in a landfill.

In addition, the Licensee vacated the premises listed on the license (1350 Beverly Road, Suite 223, McLean, Virginia 22101) without prior notice in mid-December 1996, and a forwarding address was provided by one of the Licensee's clients as Atlas Contractors, Inc., 2811 12th Street, NE., Washington, DC 20017–2402. The most recent business address for Atlas Contractors, Inc., is 6224 Georgia Ave NW, Washington, DC 20011–5112. As described above, the NRC has made numerous attempts to contact Mr. Hood at each of these addresses and issued two subpoenas for him to appear at compelled interviews at NRC headquarters. Most recently, on March 23, 2001, the NRC attempted to contact Mr. Hood, by certified mail to provide him with results of the investigation and review of this matter, and to provide him an opportunity to respond to the apparent violation and/or request a predecisional enforcement conference. The NRC's March 23, 2001, letter was sent to MPSA, care of Atlas Contractors, Inc., 6224 Georgia Avenue, NW, Washington, DC 20011 and was returned unopened. On May 18, 2001, the NRC re-sent this letter to Mr. Hood, at 1715 Leighton Wood Lane, Silver Spring, MD, and it was not returned, indicating that the letter was received.

III

Based on the above, the NRC has concluded that Mr. Hood, President and RSO of the Licensee, engaged in deliberate misconduct that has caused the Licensee to be in violation of the Order Suspending License, Order Revoking License, and 10 CFR 20.2201(a)(1)(i). These actions constitute a violation of 10 CFR 30.10, which prohibits an individual from engaging in deliberate misconduct that causes 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. As defined by 10 CFR 30.10(c)(2), deliberate misconduct means an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, or instruction of a licensee.

Mr. Hood's action in causing the Licensee to violate the Order Revoking License, and 10 CFR 20.2201(a)(1)(i), and his unresponsiveness to the NRC, 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. Hood were permitted at this time to be involved in NRC licensed activities. Therefore, the public health, safety and interest require that Mr. Hood be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Hood is required to notify the NRC of his first employment in NRC-licensed activities at any time following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the deliberate nature of Mr. Virgil J. Hood Sr.'s 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, 161o, 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:

1. Mr. Virgil J. Hood, Sr. is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. 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. If Mr. Virgil J. Hood, Sr. is currently involved with another licensee in NRC-licensed activities, he must immediately cease those 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.

3. At any time after the five year period of prohibition has expired, Mr. Virgil J. Hood, Sr. shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 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 notification, Mr. Virgil J. Hood, Sr. shall include a statement of his commitment to compliance with regulatory requirements and the basis 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. Virgil J. Hood, Sr. of good cause.

V

In accordance with 10 CFR 2.202, Mr. Virgil J. Hood, Sr. 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 Mr. Virgil J. Hood, Sr. 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: 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 Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth St. SW, Suite 23T85, Atlanta, GA 30303–8931, and to Mr. Virgil J. Hood, Sr. if the answer or hearing request is by a person other than Mr. Virgil J. Hood, Sr. If a person other than Mr. Virgil J. Hood, Sr. 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 Mr. Virgil J. Hood, Sr. 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.

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 effective and 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 this 12th day of September 2001.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410, License Nos. DPR–63 and NPF–69]

In the Matter of Niagara Mohawk Power Corporation, et al., Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Correction of Order Approving Transfer of Licenses and Conforming Amendments

I

On June 29, 2001 (66 FR 34723), the NRC staff published an Order approving the direct transfer of Facility Operating Licenses Nos. DPR–63 and NPF–69, for the Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP1 and NMP2), to Nine Mile Point Nuclear Station, LLC (NMP LLC), indirect transfers pertaining to the associated corporate structure changes of NMP LLC's corporate parent, and conforming amendments. Subsequently, the NRC staff noted that the Order contains an inadvertent error, in that the wording ''as required under 10 CFR 50.75(f)(1), unless otherwise approved by the NRC'' should not have been included in condition (2). Accordingly, the staff has corrected this error. The corrected condition (2) now reads: ''On the closing date of the transfer of NMP1 and NMP2 to it, NMP LLC shall: (1) obtain from the transferors all of their accumulated