such products before allowing them to be distributed. By distributing products that had not been reviewed and approved by NRC, 21st Century circumvented the very process that is designed to assure safety, and thereby created a potential for safety consequences.

4. The NRC's Office of Investigations (OI) conducted a comprehensive investigation into the violations. OI found no evidence of employee sabotage and the licensee has not provided any such evidence. If the NRC had found evidence of employee sabotage as the cause of the violations, we would have held 21st Century accountable nonetheless, and could have considered assigning a higher severity level to the violations, in accordance with Section IV.A.4 of the Enforcement Policy. NRC licensees are accountable for the violations committed by their employees, and appropriate enforcement action may be taken therefor. *Advanced Medical Systems, Inc.,* 39 NRC 285, 311–12 (1994), *aff'd. Advanced Medical Systems, Inc.* v. *NRC,* 61 F. 3d 903 (6th Cir. 1995). *See also* Enforcement Policy, Section VII.B.6.

5. The ''two years or two inspection'' criterion was added to the civil penalty assessment process in 1995. In the June 30, 1995 **Federal Register** notice announcing this and other Enforcement Policy changes, the NRC said this particular change was made to focus additional attention on ''situations of greater concern (*i.e.*, where a licensee has had more than one significant violation in a 2-year or two-inspection period ....'' The two-inspection period interval was adopted in recognition of the fact that some licensees, such as 21st Century Technologies, Inc., are inspected at intervals that exceed two years.

6. There is no basis to agree with the licensee's assertion that it should be given credit for ''Identification'' as the licensee did not in fact identify any of the violations itself. Moreover, 21st Century was the subject of previous escalated enforcement action in 1996 for unauthorized distribution of licensed material, and was repeatedly told verbally and in writing that no products could be distributed that were not explicitly authorized by the license. Despite that previous enforcement action, the licensee failed to put a program in place to identify non-compliances.

7. While the licensee has laid out an extensive set of long-term corrective actions, the point the NRC made in denying credit for prompt and comprehensive corrective action was that the licensee was still developing these corrective actions at the time of the enforcement conference, about two years after NRC became involved in pointing out the violations to the licensee. While the licensee may have taken timely short-term actions to stop the violations as they were identified, the licensee did not consider long-term comprehensive action to improve its oversight of licensed activities until it hired a consultant just prior to the predecisional enforcement conference. Accordingly, the licensee's corrective actions overall were not prompt.

8. There is no basis to grant 21st Century's request for mitigation and a reduction in the severity level of the violations, due to the claimed ''special circumstances'' of significance of the violations, lack of clarity of the requirement, overall sustained performance of the licensee, ''good faith'' (non-willful) nature of the violations, or extensive corrective action. The significance of the violations does not justify mitigation because the Severity Level III classification was appropriate and in accordance with the Enforcement Policy. *See* Items 1–4, above. There was no lack of clarity in the pertinent license condition. The licensee's admitted failure to understand its own license does not reduce the significance of the violations. *See* Item 1, above. The licensee's assertion that its overall sustained good performance justifies mitigation is not supported by the facts or the Enforcement Policy. The 1996 enforcement action in conjunction with the subject current violations indicates the opposite of sustained good performance. Moreover, the Enforcement Policy nowhere states that the assigned severity level may be reduced because of sustained good performance. The licensee's assertion that it deserves mitigation because the violations were committed in ''good faith'' (no willfulness) is unjustified. *See* Items 1–2, above. Nor would any corrective actions justify a reduction in the assigned Severity Level III. Corrective actions are considered in determining whether the base civil penalty should be increased or decreased. *See* Enforcement Policy, Section VI.C.2.c. The NRC staff did consider the licensee's corrective actions and appropriately determined that credit for prompt and comprehensive corrective actions was not warranted. *See* Item 7, above.

NRC Conclusion

The NRC concludes that the severity level of the violations was appropriately determined, that the civil penalty assessment process was correctly followed, and that the licensee has not provided a basis for reducing the severity level of the violations or for mitigating the proposed civil penalty. Therefore, the staff recommends that the civil penalty proposed for the violations in the notice should be imposed by Order.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its June 21, 2004, application for proposed amendment to Facility Operating License No. NPF–76 and Facility Operating License No. NPF–80 for the South Texas Project, Units 1 and 2, respectively, located in Matagorda County, Texas.

The proposed amendment would have revised the Technical Specifications to extend the steam generator inspection interval.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 20, 2004 (69 FR 43463). However, by letter dated August 12, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 21, 2004, and the licensee's letter dated August 12, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of August, 2004.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–02]

Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission the University of Michigan Ford Nuclear Reactor (FNR)

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from the University of Michigan dated June 23, 2004, for a license amendment approving its proposed decommissioning plan for the FNR (Facility License No. R–28) located in Ann Arbor, Michigan.

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and