NUCLEAR REGULATORY COMMISSION ISSUANCES

January 1997

This report includes the issuances received during the specified period from the Commission (CJ), the Atomic Safety and Licensing Boards (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM)

The summaries and headnotes preceding the opinions reported herein are not to be deemed a part of those opinions or have any independent legal significance.

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U.S. NUCLEAR REGULATORY COMMISSION

MASTER

Prepared by the
Office of Information Resources Management
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(301-415-6844)

COMMISSIONERS

Shirley A. Jackson, Chairman
Kenneth C. Rogers
Greta J. Dicus
Nils J. Diaz
Edward McGaffigan, Jr.

B. Paul Cotter, Jr., Chief Administrative Judge, Atomic Safety & Licensing Board Panel

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Shirley Ann Jackson, Chairman
Kenneth C. Rogers
Greta J. Dicus
Nils J. Diaz
Edward McGaffigan, Jr.

In the Matter of

Docket No. 40-8027-EA

**SEQUOYAH FUELS CORPORATION
and GENERAL ATOMICS
(Gore, Oklahoma Site Decontamination
and Decommissioning Funding)**

January 22, 1997

The Commission grants two petitions for review challenging the Licensing Board's approval of a settlement agreement. The Commission also establishes a briefing schedule.

MEMORANDUM AND ORDER

The State of Oklahoma, Native Americans for a Clean Environment, and the Cherokee Nation have filed petitions for Commission review of the Atomic Safety and Licensing Board's Memorandum and Order, LBP-96-24, 44 NRC 249 (1996), in which a majority of the Board approved a settlement agreement between the NRC Staff and General Atomics (GA) in this proceeding. In a dissenting opinion, Judge Bollwerk raised questions that, in his view, merited further inquiry. The NRC Staff and GA oppose Commission review. In accordance with the considerations set forth in 10 C.F.R. § 2.786(b)(4), the Commission has decided that review of LBP-96-24 is appropriate.

Pursuant to 10 C.F.R. § 2.786(d), the Commission sets the following briefing schedule:

1. Intervenor and the State shall file their briefs within 21 calendar days after service of this Order. Their briefs shall not exceed thirty pages each.
2. The Staff and GA may file responsive briefs within 21 calendar days after service of the Petitioners' brief. Their responses shall not exceed thirty pages each.
3. Within 10 calendar days after service of the responsive briefs, Intervenor and the State may file reply briefs. Their replies shall not exceed ten pages each.

The parties' briefs should address (1) what the role of the Board should be in reviewing settlements; (2) what factors the Board should consider when applying the "public interest" standard governing review of settlements (*see Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)); (3) the arguments set forth in the petitions for review; and (4) the questions raised by Judge Bollwerk. Briefs exceeding ten pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited. Page limitations on briefs are exclusive of pages containing a table of contents, table of cases, and of any addendum containing statutes, rules, regulations, etc.

IT IS SO ORDERED.

For the Commission¹

JOHN C. HOYLE
Secretary of the Commission

Dated at Rockville, Maryland,
this 22d day of January 1997.

¹ Commissioner Diaz was not available for the affirmation of this Order. If he had been present, he would have approved the Order.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Shirley Ann Jackson, Chairman
Kenneth C. Rogers
Greta J. Dicus
Nils J. Diaz
Edward McGaffigan, Jr.

In the Matter of

Docket No. 70-3070-ML

LOUISIANA ENERGY SERVICES, L.P.
(Claiborne Enrichment Center)

January 29, 1997

The Commission denies a motion, filed by the Intervenor, requesting partial reconsideration of CLI-96-8, 44 NRC 107 (1996). In CLI-96-8, the Commission granted in part and denied in part the Intervenor's petition for review of Atomic Safety and Licensing Board Initial Decision LBP-96-7, 43 NRC 142 (1996), which resolved all contentions on emergency planning in the Applicant's favor.

RULES OF PRACTICE: RECONSIDERATION MOTIONS

Motions for reconsideration may not rest on a new thesis that could have been raised earlier in a petition for review.

RULES OF PRACTICE: RECONSIDERATION MOTIONS

NRC rules contemplate petitions for reconsideration of a Commission decision on the merits, not petitions for reconsideration of a Commission decision to decline review of an issue. *See* 10 C.F.R. § 2.786(e).

ORDER

The Intervenor, Citizens Against Nuclear Trash (CANT), has filed before the Commission a Motion for Partial Reconsideration of CLI-96-8, 44 NRC 107 (1996). Both the NRC Staff and the Applicant, Louisiana Energy Services (LES), oppose the Intervenor's motion. For the reasons stated in this Order, we deny the motion.

In CLI-96-8, the Commission granted in part and denied in part CANT's petition for review of Atomic Safety and Licensing Board Initial Decision LBP-96-7, 43 NRC 142 (1996). The Licensing Board's decision resolved all contentions on emergency planning in favor of LES. The Commission in CLI-96-8 granted review of only one issue raised in CANT's petition for review: whether the Licensing Board erred in directing the NRC Staff to clarify the intended role of the Applicant's onsite fire brigade. 44 NRC at 108. The Commission went on to hold, based on the pleadings and record before it, that the emergency plan description of the onsite brigade's size and training meets Commission requirements. 44 NRC at 110.

We deny CANT's motion for partial reconsideration for three independent reasons:

First, motions for reconsideration may not rest on a "new thesis."¹ Both LES and the NRC Staff argue that CANT is now raising for the first time before the Commission the issue of the qualifications and training of the offsite fire department, an issue they say that CANT failed to raise in its Petition for Review of LBP-96-7. We agree with the NRC Staff and LES. While CANT's petition for review contained references to the offsite fire department (at 2, 5), the petition failed to articulate any explicit challenge to the Board's findings on the department's training and qualifications. A "cursory assertion" is insufficient to raise an issue for appeal. See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 272 (1996).²

Secondly, even if CANT had intended in its petition for review to raise the offsite fire department question, the Commission in CLI-96-8 explicitly denied review of the Licensing Board's decision, "except for a single issue," involving "the intended role and training of the Applicant's onsite fire brigade." 44 NRC at 108. CANT, in requesting reconsideration of CLI-96-8, does not challenge the Commission's findings on the role and training of the onsite fire brigade. CANT

¹ See, e.g., *Central Electric Power Cooperative* (Virgil C. Summer Nuclear Station, Unit 1), CLI-81-26, 14 NRC 787, 790 (1981), quoting *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-418, 6 NRC 1, 2 (1977).

² The NRC Staff and LES also claim that the motion for reconsideration was filed 2 days late, a point disputed by CANT. We do not decide this timing issue. Even taking into account all of CANT's arguments in its motion for reconsideration and its reply brief, and assuming *arguendo* that the motion is timely, we find no reason to grant it.

instead requests the Commission to review the qualifications and training of the *offsite* fire department, a subject the Commission did not accept for review. Our rules contemplate petitions for reconsideration of a Commission decision on the merits, not petitions for reconsideration of a Commission decision to decline review of an issue. See 10 C.F.R. § 2.786(e).

Third, CANT's motion for reconsideration simply does not raise any compelling argument calling into question the Licensing Board's findings on the training and qualifications of the offsite fire department. The Board made several findings about the training and qualifications of the offsite fire department. See LBP-96-7, 43 NRC at 151-52, 158, 159-61, 164-65. It found the information outlined in the LES plan adequate under the "brief description" requirement of NRC rules (10 C.F.R. §§ 40.31(j)(3)(i), 70.22(i)(3)(i)); it properly based its findings on information contained in the record and found in either expert testimony or the LES emergency plan itself.

We are not persuaded by CANT's argument that the Licensing Board was unaware that the offsite fire department would be ultimately responsible for fighting a severe onsite fire at the LES facility. The Board assumed from the SAR and the SER that the offsite fire department would be the primary organization responsible for controlling fires at the plant, and that the onsite fire brigade would merely "supplement" but not replace the local fire department. 43 NRC at 161. In referring the onsite brigade issue to the Staff, the Board sought merely to confirm that the *onsite* brigade would not have a bigger firefighting role than the Board had found reflected in the SAR and SER, and accordingly to ensure that the brigade did not need additional training or members. 43 NRC at 160-61. The Board expressed no concerns about the adequacy of the offsite fire department.

The Intervenor's Motion for Partial Reconsideration of CLI-96-8 is *denied*. It is so ORDERED.

For the Commission

JOHN C. HOYLE
Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of January 1997.

Atomic Safety and Licensing Boards Issuances

ATOMIC SAFETY AND LICENSING BOARD PANEL

B. Paul Cotter, Jr.,* *Chief Administrative Judge*
James P. Gleason,* *Deputy Chief Administrative Judge (Executive)*
Frederick J. Shon,* *Deputy Chief Administrative Judge (Technical)*

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Dr. Harry Foreman	Dr. Kenneth A. McCollom	

*Permanent panel members

LICENSING BOARDS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

In the Matter of

Docket No. 50-219-OLA
(ASLBP No. 96-717-02-OLA)

GENERAL PUBLIC UTILITIES
NUCLEAR CORPORATION
(Oyster Creek Nuclear Generating
Station)

January 31, 1997

In this proceeding concerning challenges by Intervenor Nuclear Information Resource Service (NIRS) and the Oyster Creek Nuclear Watch (OCNW) to a technical specification change regarding heavy load handling over the Oyster Creek Nuclear Generating Station spent fuel pool, the Licensing Board grants summary disposition in favor of Licensee General Public Utilities Nuclear Corporation (GPUN) on the sole intervenor contention, ruling that (1) prior to the requested revision, the technical specification did preclude the heavy load activity now at issue; (2) as they embody the agency's "defense-in-depth" philosophy, the provisions of NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants" (July 1980), which Intervenor assert preclude authorizing the requested technical specification change, establish guidance rather than regulatory requirements for handling heavy loads; and (3) nothing in the provisions of NUREG-0612 and later NRC Staff generic letters intended to promote compliance with that document's recommendations bars the adoption of the requested technical specification change.

LICENSE: CONSTRUCTION OF TERMS (PLAIN MEANING)

The first interpretational tool for discerning the meaning of the terms of a license is the plain meaning of the language of the provision in question.

LICENSE: CONSTRUCTION OF TERMS (SUBSEQUENT REVISION)

A subsequent enactment that declares the intent of an earlier provision generally is to be given "great weight" in resolving a construction problem. *See Red Lion Broadcasting v. FCC*, 395 U.S. 367, 380-81 (1969); *cf.* 17A Am. Jur. 2d *Contracts* § 388, at 415-16 (1991) (when contract terms are ambiguous and parties have made other contracts concerning the same subject matter, those instruments can be examined together to aid in interpretation). The relevance of such a subsequent enactment seems particularly telling when the parties who drafted and approved the revision declare it was intended to clarify any ambiguity in the prior version.

LICENSE: CONSTRUCTION OF TERMS ("EXCEPT")

In a technical specification paragraph that sets forth a general prohibition, the use of the term "except" to describe a specific activity sanctioned in a subsequent paragraph establishes that, but for its specification as an exception, that activity would be covered by the general prohibition.

REGULATORY GUIDES: APPLICATION; STATUS

A Staff report bearing the NUREG designation does not fall into the category of a regulatory "requirement," such as a statute, regulation, license condition, or order. *See Curators of the University of Missouri*, CLI-95-1, 41 NRC 71, 98 (1995). Instead, at best, "it serves as guidance, setting forth but one method for meeting the applicable regulatory requirements In other words, that document 'is treated simply as evidence of a legitimate means for complying with regulatory requirements.'" *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986) (quoting *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1298-99 (1982), *aff'd in part on other grounds*, CLI-83-22, 18 NRC 299 (1983)).

GENERIC COMMUNICATIONS: APPLICATION; STATUS

In a generic letter that both "requested" that licensees take various actions and "required" that licensees provide a report detailing their compliance efforts, in contrast to the reporting component of a generic letter, which seemingly would constitute a "requirement," *see* 10 C.F.R. §§ 2.204, 50.54(f), the generic letter's compliance request would not constitute a "requirement" in the absence of some additional regulatory directive such as an order or a regulation mandating compliance. *Cf.* 60 Fed. Reg. 34,381, 34,392 (1995) (agency expects licensees to adhere to commitments resulting from administrative actions such as confirmatory action letters and will issue appropriate orders to ensure commitments are met), *reprinted in* Office of Enforcement, U.S. Nuclear Regulatory Commission, NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions" at 14 (July 1995).

ATOMIC ENERGY ACT: LICENSE AMENDMENTS

LICENSE: AMENDMENT

OPERATING LICENSE(S): TECHNICAL SPECIFICATIONS (AMENDMENT)

OPERATING LICENSE AMENDMENT HEARING: ISSUES FOR CONSIDERATION

A technical specification that is not subject to revision would not be the norm. By providing in section 187 of the Atomic Energy Act that agency-issued licenses are "subject to amendment," 42 U.S.C. § 2237; *see also, e.g.*, 10 C.F.R. § 50.90, the Congress contemplated that any license provision could be changed, at least so long as the revision sought was not inimical to the public health and safety or the common defense and security. Consequently, in the absence of language in the license (or some other regulatory requirement) that makes manifest a license provision's immutability, the question in a license amendment proceeding generally is whether the requested change is consistent with applicable agency regulatory strictures and any suitable guidance.

MEMORANDUM AND ORDER (Ruling on Summary Disposition Motion)

Pending before the Licensing Board is a motion filed by Licensee General Public Utilities Nuclear Corporation (GPUN) requesting that summary disposition be entered in its favor on the sole contention at issue in this proceeding.

This contention, which is sponsored by pro-se Intervenor Nuclear Information and Resource Service (NIRS) and the Oyster Creek Nuclear Watch (OCNW), poses a single legal issue that can be summarized as follows:

Whether a technical specification revision for GPUN's Oyster Creek Nuclear Generating Station (OCNGS) permitting a dry-shielded canister (DSC) shield plug to be moved over irradiated fuel in a DSC as a prerequisite to sealing and removing the DSC from the OCNGS spent fuel pool for transport to an onsite independent spent fuel storage installation (ISFSI) is foreclosed under the terms of a 1980 NRC staff report, Office of Nuclear Reactor Regulation (NRR), U.S. Nuclear Regulatory Commission (NRC), NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants," (July 1980) [hereinafter NUREG-0612], as it embodies the agency's "defense-in-depth" risk management precepts.

The NRC Staff supports the Licensee's motion, while Intervenor NIRS and OCNW oppose it.

For the reasons set forth below, we grant the Licensee's summary disposition motion, finding that (1) the "heavy load" limitation in OCNGS Technical Specification 5.3.1.B encompasses a shield plug movement over irradiated fuel in a DSC; (2) as it embodies the agency's defense-in-depth philosophy, NUREG-0612 provides guidance rather than requirements regarding the control of heavy loads at nuclear power plants; and (3) nothing in this NUREG-0612 guidance precludes the adoption of the requested OCNGS technical specification change.

I. BACKGROUND

As we outlined in our October 25, 1996 ruling admitting Intervenor NIRS and OCNW and their legal contention into this proceeding,¹ *see* LBP-96-23, 44 NRC 143, 147-56 (1996), the license amendment at issue here involves a change in OCNGS Technical Specification 5.3.1.B. When this proceeding began in June 1996, and through early November 1996, that provision stated "[l]oads greater than [the] weight of one fuel assembly shall not be moved over stored irradiated fuel in the spent fuel storage facility." NRC Staff Response in Opposition to Request for Hearing and Petition to Intervene of [NIRS/OCNW/Citizens Awareness Network (CAN)] (June 26, 1996) unnumbered attach. 2 (OCNGS Technical Specification, p. 5.3-1 (Apr. 10, 1995)). On November 7, 1996,

¹In that memorandum and order, we also concluded that although a third petitioner, the Citizens Awareness Network (CAN), had failed to establish its standing to intervene either as of right or as a matter of discretion, we would permit CAN to participate as an amicus curiae if it wished to do so. *See* LBP-96-23, 44 NRC at 159-61. We then established a deadline for CAN to advise the Board and the other parties that it wanted to participate as an amicus. *See id.* at 161 n.13. CAN, however, has neither appealed this ruling to the Commission nor shown any further interest in participating in this proceeding before the Board.

pursuant to a Staff "no significant hazards consideration" finding,² that provision was revised so that it now reads:

- B. 1. Loads greater than the weight of one fuel assembly shall not be moved over stored irradiated fuel in the spent fuel storage facility, except as noted in 5.3.1.B.2.
2. The shield plug and the associated lifting hardware may be moved over irradiated fuel assemblies that are in a dry shielded canister within the transfer cask in the cask drop protection system.

Letter from Ann P. Hodgdon, NRC Staff Counsel, to Licensing Board (Nov. 12, 1996) encl., at encl. 1, attach. at unnumbered p. 2 (OCNGS Technical Specification p. 5.3-1, Amendment No. 187) [hereinafter Amended Technical Specification 5.3.1.B].

GPUN proposed this change to facilitate the off-loading of spent fuel from the OCNGS spent fuel pool into dry cask storage in the OCNGS ISFSI. As we described in some detail in our earlier opinion, *see* LBP-96-23, 44 NRC at 148-50, while submerged in one corner of the spent fuel pool within the confines of a GPUN-developed cask drop protection system (CDPS) and a 60-ton onsite transfer cask (TC), the 14-ton DSC is loaded with up to fifty-two spent fuel assemblies, each weighing approximately 800 pounds. To close the DSC before removing it and the accompanying TC from the fuel pool in preparation for transport to the OCNGS ISFSI, a 4-ton shield plug attached to a crane by a 3-ton yoke is moved over the DSC and the fuel assemblies it contains and then lowered into place atop the DSC. The technical specification amendment at issue in this proceeding explicitly allows the shield plug — which weighs many times more than a fuel assembly — to be moved over the fuel assemblies in the DSC while those assemblies and the DSC are in the CDPS in the corner of the spent fuel pool.

In LBP-96-23, 44 NRC at 156-66, we found that in challenging the GPUN technical specification change, in accordance with the requirements of 10 C.F.R. § 2.714(a), (b)(2), NIRS and OCNW had both established their standing to intervene and jointly put forth a single litigable contention concerning that amendment. Their sole contention states:

² In its initial notice of opportunity for hearing regarding the Licensee's amendment request, the Staff advised that it proposed to find the change involved "no significant hazards consideration." *See* 61 Fed. Reg. 20,842, 20,848 (1996). Under Atomic Energy Act (AEA) section 189a(1)(A), (2)(A), 42 U.S.C. § 2239(a)(1)(A), (2)(a), and the implementing regulations in 10 C.F.R. §§ 50.91-.92, upon making such a finding the Staff can issue an amendment notwithstanding the pendency of a hearing request challenging the proposed license change. On November 7, 1996, based on its conclusion the GPUN proposed technical specification revision involved "no significant hazards consideration," the Staff issued the technical specification amendment effective immediately. *See* 61 Fed. Reg. 66,702, 66,720 (1996).

The GPUN application fails to provide defense-in-depth against the risks of a heavy load drop onto irradiated fuel and fails to satisfy NRC regulatory guidance as provided in NUREG-0612 "Control of Heavy Loads At Nuclear Power Plants" pertaining to defense-in-depth risk management to assure that a heavy load drop does not impact or encroach on irradiated fuel.

Supplemental Petition of [NIRS/OCNW/CAN] (July 18, 1996) at 2. Further, although the Intervenor's put forth several bases in support of this contention, we determined only one was adequate to support its admission, which we summarized as follows:

The NRC's fundamental regulatory defense-in-depth principle is implemented in NUREG-0612 "Control of Heavy Loads at Nuclear Power Plants," which is the equivalent of a regulatory guide. Because OCNWS does not employ a single failure proof crane for shield plug movement, consistent with NUREG-0612 guidelines as described in enclosure 1 to NRC Generic Letter 85-11 (June 28, 1985), GPUN must rely on analyzed safe load paths and restricted load limits for movement of heavy loads "to assure, to the extent practical" that heavy loads are not carried over or near irradiated fuel. Although GPUN claims in its safety evaluation regarding the proposed technical specification change that a shield plug drop accident is not credible because of GPUN administrative controls (e.g., rail stops), operator training, and inspections concerning dry-storage related spent fuel movements, this does not adequately address human error or mechanical/electrical failure issues. Rather, the most effective way to avoid such failures is to restrict both human-directed activity and prohibit the movement of heavy loads as is done with current Technical Specification 5.3.1.B. As such, consistent with the agency's NUREG-0612 defense-in-depth guidance, the existing provision cannot be revised as the Licensee has requested.

LBP-96-23, 44 NRC at 151-52.

In considering the admissibility of the Intervenor's contention, we observed that the contention and this supporting basis are premised on the Intervenor's assertions that (1) NUREG-0612 provides binding regulatory guidance for implementing the agency's overall defense-in-depth principle in the context of heavy load control; and (2) the then-existing technical specification with its one fuel assembly heavy load limit cannot be changed consistent with NUREG-0612 because that limit is a vital control necessary for compliance with the defense-in-depth principle underlying NUREG-0612. Although recognizing GPUN and Staff assertions that NUREG-0612 is not a regulatory requirements document and declares only that moving heavy loads over or near irradiated fuel should be avoided "to the extent practical," we nonetheless found two factors established a dispute regarding the technical specification change that warranted further inquiry. The first was the apparent adoption of the then-existing GPUN technical specification with its absolute single fuel assembly load limit after the publication of NUREG-0612 with its "to the extent practical" language. The second concerned various statements in Licensee and Staff documents regarding NUREG-0612 "requirements." See *id.* at 165-66. We also concluded this contention apparently presented a legal issue so that summary disposition

provided the appropriate procedural avenue for seeking to resolve its merits in the first instance. We thus established a schedule for dispositive motions and responses by the parties. *See id.* at 166-67.

In a November 15, 1996 motion, which is accompanied by a statement of material facts not in dispute and the supporting affidavit of GPUN Licensing and Regulatory Affairs Director John C. Fornicola, Licensee GPUN seeks summary disposition in its favor on this contention. *See* Licensee's Motion for Summary Disposition (Nov. 15, 1996) [hereinafter GPUN Dispositive Motion]; Licensee's Statement of Material Facts as to Which There Is No Genuine Dispute (Nov. 15, 1996) [hereinafter GPUN Material Facts Statement]; Affidavit of John C. Fornicola (Nov. 15, 1996) [hereinafter Fornicola Affidavit]. In a December 6, 1996 response, which includes the supporting affidavits of NRC Senior Project Manager Ronald B. Eaton and NRC Senior Reactor Engineer Harold Walker, the Staff agrees that GPUN's summary disposition request should be granted. *See* NRC Staff Response in Support of Licensee's Motion for Summary Disposition (Dec. 6, 1996) [hereinafter Staff Response]. On the same date, Intervenor NIRS and OCNW filed a response opposing GPUN's summary disposition request, albeit without any supporting affidavits. *See* Petitioner[s'] Opposition to GPUN Motion for Summary Disposition (Dec. 6, 1996) [hereinafter NIRS/OCNW Response]. Thereafter, in accordance with the pleading schedule we established, on December 20, 1996, GPUN filed a reply to the Intervenor's response. *See* Licensee's Reply to Petitioners' Opposition to Motion for Summary Disposition (Dec. 20, 1996) [hereinafter GPUN Reply].³

II. ANALYSIS

A. Standards Governing Summary Disposition

Under Rule 56(c) of the Federal Rules of Civil Procedure, a party is entitled to seek summary judgment in its favor on the merits of any claim for which "there is no genuine issue as to any material fact." The Commission's administrative counterpart to this judicial rule is found in 10 C.F.R. § 2.749(d), which provides in pertinent part:

The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.

³ By memorandum issued January 3, 1997, we advised the parties we had decided not to hold an oral argument on GPUN's dispositive motion. *See* Licensing Board Memorandum (Oral Argument on Dispositive Motion) (Jan. 3, 1997) at 1-2.

A number of the central procedural requirements governing the summary disposition process were recently summarized as follows:

The party filing the summary disposition motion has the burden of demonstrating the absence of any genuine issue of material fact. In this regard, [10 C.F.R. §] 2.749(a) requires that the moving party include a statement of material facts about which there is no genuine issue to be heard. In contrast, the opposing party must append to its response a statement of material facts about which there exists a genuine issue to be heard. If the responding party does not adequately controvert material facts set forth in the motion, the party faces the possibility that those facts may be deemed admitted. If, however, the evidence before the Board does not establish the absence of a genuine issue of material fact, then the motion must be denied even if there is no opposing evidence. Nevertheless, a party opposing a motion cannot rely on a simple denial of the movant's material facts, but must set forth specific facts showing there is a genuine issue of material fact.

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-18, 44 NRC 86, 92-93 (citations omitted), *petition for review denied*, CLI-96-9, 44 NRC 112 (1996).

B. The Parties' Positions

1. GPUN's Arguments

In seeking summary disposition, GPUN declares that the two factors identified by the Board as potential support for the Intervenor's position that OCNGS Technical Specification 5.3.1.B cannot be changed in fact provide no justification for that claim. The Licensee asserts that while, as the Board observed, NUREG-0612 does indicate that in 1980 OCNGS did not have a technical specification governing the movement of heavy loads over spent fuel, NUREG-0612 was incorrect. According to GPUN, Technical Specification 5.3.1.B was adopted initially in 1977, some 3 years before NUREG-0612 was issued. *See* GPUN Dispositive Motion at 19 & n.13; GPUN Material Facts Statement at 1-2. As a result, GPUN concludes that any concern the language of Technical Specification 5.3.1.B prior to its recent amendment was reflective of a Licensee/Staff judgment regarding the application of defense-in-depth principles is misplaced.

As to the second concern about the language of various Licensee and Staff documents referring to NUREG-0612 "requirements," GPUN cites agency authority and language in NUREG-0612 it asserts establishes that a NUREG document, like a Staff regulatory guide, merely serves as guidance and cannot prescribe requirements. *See* GPUN Dispositive Motion at 8; GPUN Material Facts Statement at 1. GPUN further declares that while the Staff requested in two Staff generic letters that licensees conform to certain NUREG-0612 recommendations, the NUREG-0612 recommendation that licensees adopt a technical specification like OCNGS Technical Specification 5.3.1.B to govern

heavy load handling was not among them. *See* GPUN Dispositive Motion at 9-10; GPUN Material Facts Statement at 1.

In support of its summary disposition request, GPUN also claims that the Intervenor's position is legally untenable because Technical Specification 5.3.1.B "only applies to heavy loads moved over stored fuel in the spent fuel storage racks and is no legal impediment to the movement of heavy loads over spent fuel in the CDPS." GPUN Dispositive Motion at 2. According to GPUN, by "wording and intent" Technical Specification 5.3.1.B has always applied only to "stored" spent fuel, which does not include fuel assemblies placed in the CDPS prior to being removed from the spent fuel pool. *Id.* at 11. GPUN asserts that it requested the amendment at issue "at the suggestion of the NRC staff and out of an abundance of caution, only to make this meaning more explicit." *Id.* GPUN argues that various factors support this interpretation including (1) the use of the terms "stored" and "storage" in Technical Specification 5.3.1.B prior to its recent amendment; (2) a purported Staff/Licensee understanding about this meaning under Technical Specification 5.3.1.B that permitted GPUN in the mid-1980s to place a "heavy load" lid over fuel assemblies while loading and unloading a transportation cask in the CDPS as the cask was being sent to and later returned from a reprocessing facility; (3) a Staff interpretation of a similar technical specification at the Palisades Nuclear Plant; (4) language in the Safety Evaluation issued by the Staff in support of the November 7, 1996 "no significant hazards consideration" amendment; (5) regulatory history relative to the OCNCS spent fuel pool indicating there was a clear differentiation between the spent fuel pool and the CDPS; and (6) the language of and the interpretation accorded the agency's standard technical specification (Standard Technical Specification 3.9.6.2) regarding heavy load handling at boiling water reactors (BWRs). *See id.* at 12-22.

Finally, GPUN asserts that interpreting Technical Specification 5.3.1.B and NUREG-0612 in the manner suggested by the Intervenor is untenable because this would lead to an "absurd" result. To read these two items as the Intervenor suggests would mean GPUN is precluded from ever placing a shield plug over a loaded DSC while the cask is in the CDPS. This, GPUN declares, would violate numerous agency regulatory requirements that require shielding for spent fuel moved out of a spent fuel pool. GPUN maintains that sanctioning such an untoward result is inconsistent with the NUREG-0612 and its "to the extent practical" language, which in summarizing its recommended defense-in-depth measures declared that licensees should "'define safe travel paths through procedures and operator training so that to the extent practical heavy loads avoid being carried over or near irradiated fuel or safe shutdown equipment.'" *Id.* at 23 (quoting NUREG-0612, at 5-2). Pointing to the Staff's use of the same language in a 1985 generic letter in which the Staff recognized the need to handle the reactor vessel head over spent fuel in an open reactor vessel head

during refueling, GPUN asserts that without such an interpretation spent fuel can never be removed from the spent fuel pool. Because there is no other alternative, GPUN declares, the only conclusion is that this "to the extent practical" language sanctions the shield plug movement. *See id.* at 23-24.

2. *The Staff's Response*

In its response supporting GPUN's motion, the Staff likewise declares that, as with a Staff regulatory guide, NUREG-0612 is only a guidance document that does not prescribe requirements. *See* Staff Response at 6-7. The Staff further asserts that any technical specification, including OCNGS Technical Specification 5.3.1.B, can be changed so long as the amended provision provides reasonable assurance of protection of the public health and safety. *See id.* at 7-8. In addition, addressing the Licensee's argument that GPUN really did not need the requested amendment, the Staff cites an October 5, 1995 Staff-issued amendment for the Rancho Seco Nuclear Power Station similar to that recently granted GPUN and concludes "not only may a licensee move a shield plug over spent fuel despite a Technical Specification like [Technical Specification] 5.3.1.B (prior to the Nov. 7th amendment) (Palisades), it may amend that Technical Specification to clarify that it can move a shield plug over spent fuel in the canister/cask (Rancho Seco)." *Id.* at 8-9.

3. *The Intervenor's Arguments*

Intervenors NIRS and OCNW oppose the Licensee's summary disposition motion. They declare that the intent of Technical Specification 5.3.1.B with its prohibition on carrying a load heavier than a single spent fuel assembly over irradiated fuel was to ensure OCNGS operations were within the facility's engineering design basis, which included the offsite dose limitations set forth in 10 C.F.R. Part 100. The subsequent issuance of NUREG-0612, the Intervenor's claim, was not intended to alter this design basis, but rather to provide guidance for handling loads greater than a single fuel assembly. According to the Intervenor, with its "to the extent practical" qualifier, NUREG-0612 specified two permissible options for dealing with these loads: (1) safe load paths that precluded heavy load transportation over irradiated fuel; or (2) use of a single-failure-proof crane. Before it was amended in November 1996, OCNGS Technical Specification 5.3.1.B with its prohibition on moving heavy loads over irradiated fuel satisfied the first option. If, however, GPUN wants to move heavy loads over irradiated fuel, the Intervenor argues that the Licensee must comply with the second option by installing a single-failure-proof crane. *See* NIRS/OCNW Response at 6-7.

The Intervenor also declare that, notwithstanding the Licensee and Staff attempts to obscure various references to NUREG-0612 "requirements" by rendering those references interchangeable with the term "guidelines," the provisions of NUREG-0612 embody the fundamental regulatory mandate of defense in depth that must be complied with. *See id.* at 8-9. Further, Intervenor NIRS and OCNW describe as "legalistic semantics" the GPUN attempt to establish that Technical Specification 5.3.1.B never applied to the movement of the DSC shield plug based on the purported distinction between whether fuel assemblies are in the spent fuel pool for "storage" or for "transport." *Id.* at 9. They also suggest that the prior cask movement described by GPUN either was an undetected noncompliance or, at best, could be sanctioned under language of the pre-November 1996 technical specification because that movement involved offsite shipments, as opposed to the presently proposed activities that will involve the onsite ISFSI. Finally, the Intervenor question why it was necessary to seek this amendment at all if, as GPUN asserts, the mid-1980s transfer of fuel assemblies from the reprocessing facility was in compliance with the prior, unamended language of Technical Specification 5.3.1.B. *See id.* at 10. NIRS and OCNW conclude that GPUN's motion should be denied.⁴

4. GPUN's Reply

In reply,⁵ GPUN labels the Intervenor's various claims "unpersuasive" because they are based on mere allegations, without supporting affidavits, evidence, or other authority. GPUN Reply at 2. The Intervenor's attempt to lend regulatory significance to NUREG-0612 is, according to GPUN, a totally unsupported allegation that contradicts long-standing agency precedent regarding the weight to be given to such documents. GPUN also declares that, in light of this precedent and the Staff's uncontroverted confirmation that NUREG-0612 was not intended to impose regulatory strictures, there is no genuine material issue regarding the references to NUREG-0612 "requirements" in various Licensee and Staff documents. *See id.* at 3-4.

Further, according to GPUN, both it and the Staff have established Technical Specification 5.3.1.B was not adopted in response to NUREG-0612 and, in any event, was never intended to prevent moving a shield plug over a DSC containing spent fuel. In this regard, the Licensee classifies as "mere allegation and suspicion" the Intervenor's charge that an earlier offsite cask movement was

⁴ In establishing a schedule for summary disposition filings, we noted that the Intervenor could, if they wished, seek to establish their need for discovery to respond to the Licensee's motion. *See* LBP-96-23, 44 NRC at 166 n.20. The Intervenor's response makes no mention of the need for discovery.

⁵ Under our schedule governing dispositive motion filings, the Intervenor were entitled to file a reply to the Staff's response to GPUN's motion. *See* LBP-96-23, 44 NRC at 166. They made no such filing, however.

an undetected noncompliance and maintains the Intervenor's asserted distinction between offsite and onsite transportation is meaningless. *Id.* at 5-7.

Finally, GPUN argues the Intervenor's claim that consistent with NUREG-0612 it must use a single-failure-proof crane to move any heavy load over spent fuel should be rejected. This assertion is deficient, GPUN declares, because it is based on a misreading of NUREG-0612 and is an untimely new basis for the Intervenor's contention that they have failed to show meets the late-filing standards of 10 C.F.R. § 2.714(a). *See id.* at 7-9.

C. Discussion

1. *Applicability of Technical Specification 5.3.1.B to DSC Shield Plug Movements*

In assessing the various arguments made by GPUN in support of its dispositive motion, we begin with the Licensee's assertion the requested amendment is really unnecessary because Technical Specification 5.3.1.B, as it existed prior to the November 1996 "no significant hazards consideration" amendment, already permitted GPUN to place the shield plug over the irradiated fuel in a DSC. As described above, GPUN has put forth a host of explanations as to why this is so, including references to Staff and Licensee interpretations of that language and Staff interpretations of similar language in the agency's standard technical specification and other facility technical specifications relating to movement of heavy loads.

As GPUN acknowledges, however, the first interpretational tool is the plain meaning of the language of the provision in question. *See* GPUN Dispositive Motion at 12 & n.6. In this instance, GPUN asserts, the references in Technical Specification 5.3.1.B to "stored irradiated fuel" in the "the spent fuel storage facility" settle the issue of its meaning. According to GPUN, the CDPS containing the DSC is not a "storage" area nor is irradiated fuel in the assemblies in the DSC "stored."

The problem with this claim, at least insofar as it is asserted to establish a clear and unambiguous meaning, is that it does not account adequately for the physical circumstances regarding spent fuel handling at OCNGS as they have been presented to us. As we noted in our previous determination, *see* LBP-96-23, 44 NRC at 149, the CDPS is a cylinder physically located within and attached to the walls of one corner of the OCNGS spent fuel pool — i.e., the OCNGS "spent fuel storage facility" — in which irradiated fuel is stored. The CDPS is configured this way so that while spent fuel assemblies are being loaded into a DSC, those assemblies can remain submerged in the water that fills the spent fuel pool and provides shielding and residual heat removal for the stored spent fuel. Given this physical configuration, at least so long as the

irradiated fuel remains within the confines of the spent fuel pool, the distinction between "storage" and "packaging/transfer" upon which GPUN seeks to rely is, in our estimation, too problematic to allow us to conclude the language of Technical Specification 5.3.1.B is "unambiguous" in this regard.

This ambiguity in the language of Technical Specification 5.3.1.B necessarily causes us to look for other clues to its meaning. GPUN asserts, and the Staff seemingly agrees, that a number of circumstances support its reading of this technical specification, including GPUN's past practice under this provision and the Staff's interpretation of similar provisions. The Licensee, however, does not make reference to one interpretational tool that has been found significant in resolving language construction issues — a subsequent enactment that declares the intent of an earlier provision. As the United States Supreme Court has noted, such later enactments generally are to be given "great weight" in resolving a construction problem. *See Red Lion Broadcasting v. FCC*, 395 U.S. 367, 380-81 (1969); *cf.* 17A Am. Jur. 2d *Contracts* § 388, at 415-16 (1991) (when contract terms are ambiguous and parties have made other contracts concerning the same subject matter, those instruments can be examined together to aid in interpretation). The relevance of such a subsequent enactment seems particularly telling here when the parties who drafted and approved the revision declare it was intended to clarify any ambiguity in the prior version. *See* GPUN Dispositive Motion at 11; Staff Response at 7.

The language of the recent revision to this technical specification makes it readily apparent the interpretation of its predecessor's meaning now proffered by GPUN is not correct. After stating that heavy loads shall not be moved over stored irradiated fuel in the spent fuel storage facility, amended Technical Specification 5.3.1.B.1 adds the proviso "*except as noted in 5.3.1.B.2.*" Amended Technical Specification 5.3.1.B (emphasis supplied). Amended Technical Specification 5.3.1.B.2 then states that the shield plug may be moved over irradiated fuel in a DSC in the CDPS.

The use of the term "except" in paragraph one of amended Technical Specification 5.3.1.B to describe the shield plug heavy load activity sanctioned in paragraph two, plainly establishes that, but for its specification as an exception, this activity would be prohibited by paragraph one. Otherwise, there would be no reason to create the exception. As the GPUN technical specification is now worded, therefore, it indicates quite clearly that, without the specified exception, the DSC shield plug activity over irradiated fuel that is the focus of GPUN's amendment request would be a prohibited heavy load activity. And because the prohibition language in amended paragraph 5.3.1.B.1 is indistinguishable from that in Technical Specification 5.3.1.B prior to that recent revision, the construction rule regarding subsequent enactments counsels that, affording considerable weight to an unambiguous expression of intent by the drafting and enacting parties, we give a parallel construction to these identical provisions.

We must, therefore, reject GPUN's claim it is entitled to summary disposition because the shield plug movement activity in question is not covered under the terms of Technical Specification 5.3.1.B prior to its revision in November 1996.⁶

2. *The Status and Meaning of NUREG-0612*

Having concluded that the technical specification at issue here would, unless amended, preclude the Licensee's planned shield plug movement activity, we next consider whether, as the Intervenor asserts, the amendment proposed by GPUN and adopted by the Staff in November 1996 is appropriate in light of NUREG-0612. As we have explained, the Intervenor claims Technical Specification 5.3.1.B cannot be amended as GPUN has asked because to do so would violate the precepts of NUREG-0612 as it implements the agency's defense-in-depth approach to regulation.⁷

a. *Background on NUREG-0612*

In analyzing this assertion, we begin with an overview of NUREG-0612, the central focus of the Intervenor's contention before the Board. This 1980 document sets forth the results of a Staff attempt to make a systematic examination of the adequacy of then-existing measures for handling of "heavy loads" at nuclear power plants.⁸ In its initial summary, the report states:

This report provides the results of the NRC staff's review of the handling of heavy loads and includes the NRC staff's recommendations on actions that should be taken to assure safe handling of heavy loads. These recommendations include: (1) a program should be initiated to review operating plants against the guidelines developed in [this report]; (2) certain interim measures should be taken for operating plants until completion of this review program; (3) changes to certain Standard Review Plans and Regulatory Guides should be made to incorporate the guidelines in this report; (4) changes to technical specifications should be made after completion of the review; and (5) a task should be initiated to establish

⁶In this connection, we are troubled by the Staff's apparent claim that under the language of Technical Specification 5.3.1.B before its recent revision, the Licensee was free to treat the movement of the shield plug over the DSC as either covered or not covered by that license requirement. See Staff Response at 8-9. Although we have no quarrel with the general proposition there may be more than one way to comply with a regulatory requirement, *see id.* at 6, as a matter of logic we are hard pressed to understand how a directive that states heavy loads "shall not" be moved over irradiated fuel can be read to both sanction and prohibit the same heavy load movement activity. From an enforcement perspective, such an interpretation renders that "requirement" essentially meaningless.

⁷As we noted in our October 1996 issuance, "[t]he 'defense-in-depth' principle is the agency policy under which regulated entities are required to safeguard the public health and safety 'through multiple intermeshing and overlapping protections.'" LBP-96-23, 44 NRC at 162 n.14 (quoting *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 813 (1974)).

⁸In using the term "heavy load" in this decision, we adopt the definition of that phrase found in NUREG-0612, which classifies a "heavy load" as "any load that weighs more than the combined weight of a single spent fuel assembly and its associated handling tool for the specific plant in question." NUREG-0612, at 1-2.

guidelines for the control of small loads near spent fuel. The guidelines proposed include definition of safe load paths, use of load handling procedures, training of crane operators, guidelines on slings and special lifting devices, periodic inspection and maintenance for the crane, as well as various alternatives that include: use of a single failure proof handling system, use of mechanical stops or electrical interlocks to keep heavy loads away from fuel or safe shutdown equipment, or analyzing the consequences of postulated heavy load drops to show these are within acceptable limits.

NUREG-0612, at iii. The report then goes on to provide a generic analysis of the consequences of heavy load drops, including the "potential problem areas" of offsite releases from heavy load drops on spent fuel or safe shutdown equipment and recriticality from fuel reconfiguration; a survey of licensee information on load handling operations at reactor facilities; a review of historical data on crane operations; guidelines that describe alternative approaches for heavy loads control; and a program for implementing the suggested guidelines at operating facilities, including suggested standard review plan, regulatory guide, and technical specification changes. *See id.* at v-vi.

As highlighted by the parties in their various filings, several portions of this NUREG document potentially are pertinent to any resolution of the merits of the Intervenor's contention. For instance, as we previously noted, in describing the results of its survey on load handling procedures, NUREG-0612 indicates that OCNCS was one of twenty-seven plants without a technical specification prohibiting handling of heavy loads over spent fuel. *See id.* at 3-8, 3-9 (Table 3.2-1).

Thereafter, in section 5 of the report entitled "GUIDELINES FOR CONTROL OF HEAVY LOADS," addressing the general problem of load drop accidents the report declares that although existing operating facility heavy load handling measures cover certain of the potential problem areas, they nonetheless varied widely and did not adequately address the major causes of load handling accidents. The report identifies these causes as operator errors, rigging failures, lack of adequate inspection, and inadequate procedures. Subsequently, in section 5.1 of the report under the heading "*Recommended Guidelines*," NUREG-0612 sets forth a series of items designed to upgrade the measures already in effect "[t]o provide adequate measures that minimize the occurrence of the principal causes of load handling accidents and to provide an adequate level of defense-in-depth for handling heavy loads near spent fuel and safe shutdown systems." *Id.* at 5-1.

According to the report, the objectives of the alternative approaches it sets forth as guidelines for controlling heavy loads are to assure either (1) an extremely small load drop potential, or (2) for each of the potential problem areas, satisfaction of four "evaluation criteria." These criteria include keeping any damaged spent fuel releases well within 10 C.F.R. Part 100 limits; preventing fuel and storage rack damage from resulting in a configuration that creates an

effective multiplication factor (k_{eff}) larger than 0.95; keeping reactor vessel or spent fuel pool damage from resulting in water leakage that would uncover the fuel; and limiting damage to redundant or dual safe shutdown path equipment so as not to result in a loss of required safe shutdown functions. *See id.* at 5-1. NUREG-0612 then goes on to provide:

After reviewing the historical data available on crane operations, identifying the principal causes of load drops, and considering the type and frequency of load handling operations at nuclear power plants, the NRC staff has developed an overall philosophy that provides a defense-in-depth approach for controlling the handling of heavy loads. This philosophy encompasses an intent to prevent as well as mitigate the consequences of postulated accidental load drops. The following summarizes this defense-in-depth approach:

- (1) Provide sufficient operator training, handling system design, load handling instructions, and equipment inspection to assure reliable operation of the handling system; and
- (2) Define safe load travel paths through procedures and operator training so that to the extent practical heavy loads avoid being carried over or near irradiated fuel or safe shutdown equipment; and
- (3) Provide mechanical stops or electrical interlocks to prevent movement of heavy loads over irradiated fuel or in proximity to equipment associated with redundant shutdown paths.

Certain alternative measures may be taken to compensate for deficiencies in (2) and (3) above, such as the inability to prevent a particular heavy load from being brought over spent fuel (e.g., reactor vessel head). These alternative measures can include: increasing crane reliability by providing dual load paths for certain components, increased safety factors, and increased inspection as discussed in Section 5.1.6 of this report; restricting crane operations in the spent fuel pool area (PWRs) until fuel has decayed so that off-site releases would be sufficiently low if fuel were damaged; or analyzing the effect of postulated load drops to show that consequences are within acceptable limits. Even if one of these alternative measures is selected, (1) and (2) above should still be satisfied to provide maximum practical defense-in-depth.

NUREG-0612, at 5-1 to -2.

Thereafter, under the heading of "General," in section 5.1.1 NUREG-0612 describes seven criteria that all plants should satisfy in handling heavy loads that could be brought over or in the proximity of safe shutdown equipment or irradiated fuel in any plant area. These include (1) defining safe load paths to minimize the potential that any dropped heavy load would impact irradiated fuel or safe shutdown equipment; (2) developing procedures, such as premovement inspection criteria, to cover heavy load handling operations over or in the proximity of irradiated fuel or safe shutdown equipment; (3) training crane operators to conduct themselves in accordance with applicable American National Standards Institute (ANSI) standards; (4) ensuring that special lifting devices, such as spent fuel cask yokes and slings, satisfy applicable ANSI

guidelines; (5) ensuring that lifting devices that are not specially designed meet applicable ANSI guidelines; (6) inspecting, testing, and maintaining cranes in accordance with ANSI standards; and (7) designing cranes to meet ANSI and Crane Manufacturers Association of America (CMAA) standards.

Finally, relative to reactor buildings for BWR facilities such as OCNBS, in section 5.1.4 NUREG-0612 declares:

To assure that the evaluation criteria of Section 5.1 are satisfied one of the following should be met in addition to satisfying the general guidelines of Section 5.1.1:

- (1) The reactor building crane, and associated lifting devices used for handling the above heavy loads, should satisfy the single-failure-proof guidelines of Section 5.1.6 of this report.

OR

- (2) The effects of heavy load drops in the reactor building should be analyzed to show that the evaluation criteria of Section 5.1 are satisfied. The loads analyzed should include: shield plugs, drywell head, reactor vessel head; steam dryers and separators; refueling canal plugs and gates; shielded spent fuel shipping casks; vessel inspection platform; and any other heavy loads that may be brought over or near safe shutdown equipment as well as fuel in the reactor vessel or the spent fuel pool. Credit may be taken in this analysis for operation of the Standby Gas Treatment System if facility technical specifications require its operation during periods when the load being analyzed should be handled. The analysis should also conform to the guidelines of Appendix A.

NUREG-0612, at 5-6 to -7. And, as an interim measure to provide reasonable assurance that no spent fuel shipping casks or other heavy loads were handled over the spent fuel pool until the section 5.1 guidelines were finally implemented, NUREG-0612 declares that facility technical specifications "should be upgraded to prohibit handling of heavy loads over the spent fuel pool." *Id.* at 5-18.

The parties' filings also suggest that two agency generic letters issued in the wake of NUREG-0612 are relevant to our inquiry here. The first, an unnumbered letter dated December 22, 1980, set forth a two-stage process for licensee responses regarding compliance with the recommendations of NUREG-0612.⁹ As outlined in the December 1980 letter, in Phase I licensees were to identify their load handling equipment within the scope of NUREG-0612 and describe how their use of that equipment complied with the six general criteria specified in NUREG-0612 section 5.1.1. Thereafter, in Phase II, BWR licensees like GPUN were to provide a second response showing that, consistent with NUREG-0612 section 5.1.4, either single-failure-proof lifting equipment was provided or such equipment was not needed, as demonstrated in a detailed load drop analysis. *See* GPUN Dispositive Motion, exh. B, encl. 3, at 2-7 (Letter

⁹ On February 3, 1981, the Staff's December 22 letter was supplemented by Generic Letter 81-07, which provided missing pages for one of the enclosures.

from Darrel G. Eisenhut, Director, Division of Licensing, to All Operating Plant Licensees, Operating License Applicants, and Construction Permit Holders (Dec. 22, 1980)). The generic letter, however, did not request that licensees undertake any technical specification change regarding heavy loads, as had been suggested in NUREG-0612.

The other correspondence of potential import is Generic Letter 85-11, dated June 26, 1985, in which the Staff described its resolution of Phase II. *See id.*, exh. D (Letter from Hugh L. Thompson, Jr., Director, Division of Licensing, to All Licensees for Operating Reactors (June 26, 1985)). In an enclosure to this letter, the Staff stated that, based on its comprehensive review of licensee Phase I responses, licensee satisfaction of the Phase I guidelines had assured that the potential for a load drop accident was extremely small. Thus, the Staff found that Phase I guidelines were "adequately providing the intended level of protection against load drop accidents." *Id.*, encl. 1, at 3.

In this generic letter, the Staff also noted that although all licensees had provided a Phase II submittal, because the Staff considered Phase II an enhancement of Phase I, it had decided to conduct a pilot program review of a limited number of plants to aid in deciding whether to undertake an equally extensive review of all Phase II submittals. According to the Staff, based on its pilot program review of twelve operating reactor sites as well as its review of five operating license applicants, it had concluded most risk associated with carrying heavy loads involved possible damage to spent fuel rather than safe shutdown systems. The Staff further declared that, as a result of licensee Phase I activities, the handling of heavy loads over spent fuel had been limited to the extent practical but, where necessary, was being performed in conformance with Phase I guidelines. *See id.* at 3-4.

There remained, however, the question of whether under Phase II licensees wishing to handle heavy loads over spent fuel would have to either install costly single-failure-proof cranes or perform costly detailed load drop analyses. The Staff concluded that with Phase I implementation improvements and based on its review of individual licensee Phase II submittals, it did not perceive a significant enough benefit in requiring costly conversion to single-failure-proof cranes or find any outstanding plant-specific concerns. Thus, the Staff declared Phase II was considered complete without further Staff or licensee action. *See id.* at 4-6.

b. Status of NUREG-0612

With this background in mind, we turn to the question of the status of NUREG-0612 as it impacts on the requested GPUN technical specification change. The Intervenor has asserted the provisions of NUREG-0612 effectively bar the requested revision. Although both the Licensee and the Staff vigorously oppose this notion, as we observed in accepting the Intervenor's

legal contention framing their NUREG-0612-based challenge to GPUN's license amendment, there are any number of instances in Licensee and Staff documents in which the terms "NUREG-0612" and "requirement" are linked. If NUREG-0612 did indeed establish "requirements," its provisions seemingly would be on a par with legally binding directives such as a statute, regulation, license condition, or order and so might, depending on its terms, preclude adoption of a requested technical specification change.

As both the Licensee and the Staff point out, however, the Commission previously has declared that a Staff report bearing the NUREG designation, such as NUREG-0612, does not fall into this category. *See Curators of the University of Missouri*, CLI-95-1, 41 NRC 71, 98 (1995). Instead, at best, "it serves as guidance, setting forth but one method for meeting the applicable regulatory requirements In other words, that document 'is treated simply as evidence of a legitimate means for complying with regulatory requirements.'" *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986) (quoting *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1298-99 (1982), *aff'd in part on other grounds*, CLI-83-22, 18 NRC 299 (1983)). Certainly, nothing in NUREG-0612 itself suggests the provisions of that document should have any other standing. *See, e.g.*, NUREG-0612, at iii, 1-4 (NUREG-0612 provides the Staff's "recommendations" and "guidelines" for actions that should be taken to assure safe handling of heavy loads). *See also* Staff Response, attach. 2, at 4 (NUREG-0612 was intended to provide guidance and acceptance criteria, not regulatory requirements) (Affidavit of Harold Walker in Support of the NRC Staff's Response in Support of the Licensee's Motion for Summary Disposition (Dec. 6, 1996) at 4); *id.*, exh. 2, at 2 (NRC positions communicated to licensees in NUREG reports are not binding requirement unless formally issued as regulations or included in order or as part of a permit or license) (NRC Management Directive Handbook 3.7, at 8 (rev. Feb. 9, 1995)).

With this Commission explanation of the status of NUREG documents generally as well as NUREG-0612's own description of the scope of its provisions, the question becomes whether anything on the record before us establishes that report's terms should be given a different status. As we have pointed out, there are various Licensee and Staff references to NUREG-0612 "requirements." Nonetheless, when viewed against the Commission's clear declaration about the status of NUREG documents, we can only conclude these otherwise unexplained references do not accurately reflect the status of that document and its provisions. That they suggest an apparent misunderstanding of this document's status is unfortunate, but in this instance these misstatements do not change the fundamental nature of this NUREG document or its provisions.

NUREG-0612 does not itself contain "requirements," but rather Staff "guidance" on assuring safe handling of heavy loads.¹⁰

c. *Meaning of NUREG-0612*

Ultimately, however, whether the provisions of NUREG-0612 are found to constitute guidance or requirements, if GPUN's amendment does not violate that document's dictates, then, at least as the issue before us has been framed by the Intervenor, summary disposition should be entered in favor of GPUN. In accepting the Intervenor's contention as litigable, the factor the Board found significant in this regard was the apparent timing of the adoption of Technical Specification 5.3.1.B as reflected in NUREG-0612.

The seeming adoption of this technical specification after the publication of NUREG-0612 suggested that the heavy load movement prohibition it contained might, as the Intervenor has maintained, reflect the Staff's ultimate judgment about how GPUN should conform with the provisions of NUREG-0612. It is apparent, however, that as GPUN has asserted (without contradiction from the Intervenor or the Staff), the information in NUREG-0612 regarding the OCNCS technical specification was incorrect. In fact, Technical Specification 5.3.1.B was adopted in 1977, some 3 years before NUREG-0612 was published. *See* GPUN Dispositive Motion at 19 & n.13; Fornicola Affidavit at 3. Thus, the timing of this technical specification's adoption provides no support for the Intervenor's assertion the technical specification's language prohibiting the movement of heavy loads over stored spent fuel was intended to reflect a NUREG-0612-dictated irrevocable prohibition for OCNCS.¹¹

¹⁰ As we have observed above, in several generic letters the Staff both "requested" that licensees take various actions to conform with the recommendations on handling heavy loads outlined in NUREG-0612 and "required" that licensees provide a report detailing their efforts in this regard. In contrast to the reporting component in these generic letters, which seemingly would constitute a "requirement," *see* 10 C.F.R. §§ 2.204, 50.54(f), the generic letters' compliance requests did not constitute "requirements" in the absence of some additional regulatory directive such as an order or a regulation mandating compliance. *Cf.* 60 Fed. Reg. 34,381, 34,392 (1995) (agency expects licensees to adhere to commitments resulting from administrative actions such as confirmatory action letters and will issue appropriate orders to ensure commitments are met), *reprinted in* Office of Enforcement, NRC, NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions" at 14 (July 1995).

¹¹ To be sure, a technical specification that is not subject to revision would not be the norm. By providing in section 187 of the Atomic Energy Act that agency-issued licenses are "subject to amendment," 42 U.S.C. § 2237; *see also, e.g.,* 10 C.F.R. § 50.90, the Congress contemplated that any license provision could be changed, at least so long as the revision sought was not inimical to the public health and safety or the common defense and security. Consequently, in the absence of language in the license (or some other regulatory requirement) that makes manifest a license provision's immutability, the question in a license amendment proceeding generally is whether the requested change is consistent with applicable agency regulatory strictures and any suitable guidance.

As is apparent from a reading of Technical Specification 5.3.1.B, nothing on the face of that provision suggests there is any basis for finding it an irrevocable license condition. The same is true for the other regulatory requirements that the Staff has identified as potentially pertinent to GPUN's requested technical specification change. *See* Staff Response, attach. 2, at 4-5. These include General Design Criterion (GDC) 2, which establishes

(Continued)

This leaves only the provisions of NUREG-0612 as the supporting source for the Intervenor's assertion that OCNCS Technical Specification 5.3.1.B cannot be revised to permit hauling heavy loads such as the DSC shield plug over spent fuel, including the fuel inside a DSC within the CDPS in the spent fuel pool.¹² The problem for the Intervenor is that the NUREG-0612 guidance in fact contemplates there are instances when, with the proper safeguards, heavy loads can be hauled over spent fuel.

As we noted above, NUREG-0612 recommends that, consistent with the agency's defense-in-depth approach, in handling heavy loads, operator training, load handling instructions, and equipment inspections be provided sufficient to assure reliable handling system operation; safe load paths be defined through procedures and operator training so that "to the extent *practical*" heavy loads are not carried over or near spent fuel; and mechanical stops and electrical interlocks be provided to prevent movement of heavy loads over irradiated fuel. NUREG-0612, at 5-2 (emphasis supplied). NUREG-0612 then goes on to declare that if there are deficiencies concerning these measures "such as an inability to prevent a particular heavy load from being brought over spent fuel," alternative measures may be utilized, such as increasing crane reliability or analyzing postulated load drop effects to show that any consequences are within acceptable limits, so long as those measures in combination with the above-specified defense-in-depth measures, will provide the "maximum *practical* defense-in-depth." *Id.* (emphasis supplied).

With its repeated emphasis on "practicality," the upshot of this guidance is not that heavy loads can never be moved over irradiated fuel. Rather, NUREG-0612 seeks to ensure that through the use of a combination of preventative measures — including crane operator training, systems and equipment upgrades and inspections, load handling instructions and procedures, and load movement planning that sets practical limits on spent fuel exposure to heavy loads — the risks inherent in hauling large loads over spent fuel are reduced to permissible levels. NUREG-0612 clearly recognizes it sometimes is necessary to move heavy loads over spent fuel, as is the case with the DSC shield plug, but that such action should be taken only after the risks involved have been confined at acceptable levels through the implementation of appropriate safeguards.

design bases for protection against natural phenomena such as earthquakes; GDC 4, which concerns design bases for environmental and dynamic effects such as missiles; GDC 5, which sets forth design bases for shared structures, systems, and components that are important to safety; and GDC 61, which establishes design criteria for fuel storage and handling. See 10 C.F.R. Part 50, App. A, § I, Criteria 2, 4, & 5, § VI, Criterion 61.

¹²In responding to the Licensee's summary disposition motion, the Intervenor has made no claims regarding the applicability of Regulatory Guides 1.13 and 1.29, which concern the design basis for spent fuel storage facilities and seismic design classification, respectively. See Staff Response, attach. 2, exhs. 3 and 4 (Office of Standards Development, NRC, Regulatory Guide 1.13, Spent Fuel Storage Facility Design Basis (rev. 1, Dec. 1975) (for comment); *id.* Regulatory Guide 1.29, Seismic Design Classification (rev. 3, Sept. 1978)).

In contesting GPUN's summary disposition motion, with one exception the intervenors have not sought to challenge the adequacy of GPUN's implementation of the various preventative measures (such as ensuring that crane operators are adequately trained and load handling procedures are developed) that NUREG-0612 suggests should be put in place to ameliorate the risks inherent in heavy load hauling. This single exception is their argument that, consistent with NUREG-0612, GPUN can move the shield plug only by installing and using a "single-failure-proof" crane, which GPUN does not have.¹³

As we described in the background discussion above, the Staff once contemplated that for BWR facilities like OCNCS to comply with the guidance in NUREG-0612, besides providing the various preventative measures discussed above, a licensee would have to show (1) the reactor building crane and associated lifting devices met the single-failure-proof guidelines,¹⁴ or (2) the effects of any remaining potential heavy load drop events in the reactor building, including those involving shield plugs, would satisfy the evaluation criteria in NUREG-0612 section 5.1, including its specification that any releases fall within 10 C.F.R. Part 100 limits and any fuel reconfiguration not exceed an effective multiplication factor of 0.95. Indeed, as it was outlined in the Staff's December 1980 generic letter, this was to be the second phase of the Staff's NUREG-0612 guidance implementation program.

It also is apparent, however, that the Staff later determined, based on its assessment of the Phase I implementation activities of licensees such as GPUN and a pilot program review of a selection of the submittals provided by all licensees addressing the Phase II criteria, that this Phase II activity was not necessary. Describing the results of Phase I in Generic Letter 85-11, the Staff declared:

Our review has indicated that satisfaction of the Phase I guidelines assures that the potential for a load drop is extremely small. We have noted improvements in heavy load handling procedures and training and crane and handling tool inspection and testing. *These changes have been geared to limiting the handling of heavy loads over safety-related equipment and spent fuel to the extent practical, but where this can not be avoided, to accomplishing it with the operational and other features of the program implemented in Phase I.* We therefore conclude that the guidelines of Phase I are adequately providing the intended level of protection against load drop accidents.

¹³ Although GPUN has challenged this claim as a late-filed basis for the intervenors' contention that they have not attempted to show meets the criteria for late-filed submissions, we consider this assertion within the confines of the intervenors' admitted legal contention and basis.

¹⁴ As described in NUREG-0612, a "single-failure-proof" crane must have certain active components meeting improved redundancy or duality evaluation criteria that render the crane highly reliable. See NUREG-0612, at 5-7.

GPUN Dispositive Motion, exh. D., encl. 1, at 2-3 (emphasis supplied). At the same time, based on its Phase II pilot program review, the Staff found that with the Phase I improvements, there was no cost/benefit justification for requiring licensees to perform costly detailed load analyses or install costly single-failure-proof cranes. The Staff concluded:

[W]e believe the Phase I implementation has provided sufficient protection such that the risk associated with potential heavy load drops is acceptably small. We further conclude that the objective identified in Section 5.1 of NUREG-0612 for providing "maximum practical defense in depth" is satisfied by the Phase I compliance, and that the Phase II analyses did not indicate the need to require further generic action at this time. This conclusion has been confirmed by the results obtained from the Phase II pilot program and additional Phase II reviews, which identified no residual heavy loads handling concerns of sufficient significance to demand further generic action. All plants have examined their load handling practices against the recommendations of Phase II and submitted the Phase II report. In this way, the utilities were required to identify any unexpected problems to the Staff.

Id. at 5-6. Thus, without installing a single-failure-proof crane, reactor licensees, including GPUN, were found by the Staff to have complied with the guidance in NUREG-0612 as it was intended to implement the agency's defense-in-depth principle.

The Intervenor has presented nothing that calls into question the efficacy of the Staff's June 1985 generic determination not to impose single-failure-proof crane installation on GPUN (or any other licensee) as a condition for compliance with the guidance it set forth in NUREG-0612.¹⁵ Nor have the Intervenor presented anything that would lead us to conclude relative to the technical specification at issue here that a different result is required in order to comply with the Staff's NUREG-0612 guidance as set forth in that document or the subsequent generic letters describing how that guidance was to be implemented.¹⁶ In the context of this case, therefore, we find nothing in NUREG-0612 (whether

¹⁵ Although it might be asserted the Staff's decision, as reflected in Generic Letter 85-11, not to mandate single-failure-proof crane installation for GPUN simply reflects a Staff recognition of the then-existing prohibition on heavy load handling found in Technical Specification 5.3.1.B, this does not account for the fact there apparently were numerous other facilities without such a technical specification that were not required to adopt such a license condition or to implement the initial NUREG-0612 guidance regarding single-failure-proof crane installation.

¹⁶ As outlined above, under the terms of the Staff's December 1980 generic letter, in the absence of a single-failure-proof crane GPUN would have been required to provide an analysis showing that any heavy load drop accident involving the spent fuel in the DSC/CDPS would satisfy the evaluation criteria in section 5.1 of NUREG-0612, including showings that any resulting releases would not violate 10 C.F.R. Part 100 limits and that any ensuing fuel reconfiguration would not result in an effective multiplication factor exceeding 0.95. As the Staff recently has made clear, however, the closeout of Phase II under Generic Letter 85-11 did not relieve licensees of the responsibility to evaluate any planned new heavy load activities under their existing technical specifications to ensure those activities do not involve an unreviewed safety question that would warrant a license amendment. See Hearing Petition, unnumbered attach. 6, at 5-6 (based on Staff audit of GPUN submission claiming no unreviewed safety issues in proposal to haul loaded DSC/TC over safety-related equipment while OCNGS is operating, Staff advises licensees of responsibility to evaluate heavy load activities and requires report discussing need for any technical specification changes

(Continued)

or not it is considered a regulatory requirement) that would, as a matter of law, preclude the adoption of GPUN's requested technical specification revision.

III. CONCLUSION

Contrary to the assertions of GPUN and the Staff, we find that, prior to its recent amendment pursuant to the Staff's November 1996 "no significant hazards consideration" determination, OCNGS Technical Specification 5.3.1.B did apply to the movement of heavy loads over irradiated fuel in a DSC within the spent fuel pool CDPS. We also find, however, that GPUN has established there is no genuine issue as to any material fact and it is entitled to a judgment as a matter of law on its claim that, contrary to the Intervenor's contention, nothing in the guidance in NUREG-0612 precludes the grant of the technical specification revision GPUN has sought.

For the foregoing reasons, it is, this 31st day of January 1997, ORDERED that:

1. The November 15, 1996 motion for summary disposition of GPUN is *granted* and, for the reasons given in this Memorandum and Order, a decision regarding the merits of the Intervenor's admitted legal contention is rendered in favor of GPUN.

2. Pursuant to 10 C.F.R. § 2.760, this decision will become the final decision of the Commission 40 days from the date of its issuance (i.e., on *Wednesday, March 12, 1997*), unless a petition for review is filed in accordance with section 2.786, or the Commission directs otherwise.

3. As the determination rendered herein terminates this proceeding before the Licensing Board, pursuant to 10 C.F.R. § 2.786(b)(1), within 15 days after service of this Memorandum and Order a party may file a petition for review with the Commission on the grounds specified in section 2.786(b)(4). The filing of a petition for review is mandatory in order for a party to have exhausted its administrative remedies before seeking judicial review. Within 10 days after service of a petition for review, any party to this proceeding may file an answer

to address planned heavy load activities) (NRR, NRC, NRC Bulletin 96-02: Movement of Heavy Loads over Spent Fuel, over Fuel in the Reactor Core, or over Safety-Related Equipment (Apr. 11, 1996)).

Subsequent to the deadline for filing contentions, GPUN made available to the Staff and the Intervenor several "worst case" analyses that appear to address the NUREG-0612 evaluation criteria. See LBP-96-23, 44 NRC at 155-56; see also GPUN Dispositive Motion, exh. A., encl. 2, at 3-5 (NRR, NRC, "Safety Evaluation of [NRR] Related to Amendment No. 187 to Facility Operating License No. DPR-16 [GPUN] and Jersey Central Power & Light Company [OCNGS] Docket No. 50-219" (Nov. 7, 1996)). The Intervenor has not made any attempt to contest the validity of those analyses in conformance with the standards governing late-filed contentions and bases. See LBP-96-23, 44 NRC at 163 n.16.

supporting or opposing Commission review. The petition for review and any answers shall conform to the requirements of section 2.786(b)(2)-(3).

THE ATOMIC SAFETY AND
LICENSING BOARD

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Charles N. Kelber
ADMINISTRATIVE JUDGE

Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 31, 1997

**Directors'
Decisions
Under
10 CFR 2.206**

DIRECTORS' DECISIONS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION

Frank J. Miraglia, Jr., Acting Director

In the Matter of

Docket Nos. 50-255
72-7

CONSUMERS POWER COMPANY
(Palisades Nuclear Plant)

January 23, 1997

The Acting Director of the Office of Nuclear Reactor Regulation is granting, in part, and denying, in part, a petition filed by the organizations Don't Waste Michigan and Lake Michigan Federation pursuant to 10 C.F.R. § 2.206. The Petitioners requested that the NRC (1) find that Consumers Power Company violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, (2) suspend the Licensee's use of the general license provisions related to dry cask storage of spent nuclear fuel, (3) require a substantial penalty be paid by the Licensee, and (4) conduct hearings related to unloading procedures for dry storage casks at Palisades. To the extent that the NRC has determined that Consumers Power Company violated NRC regulations insofar as the original unloading procedure developed for unloading dry storage casks was not adequate, the petition is granted. However, the NRC has decided not to impose a civil penalty for the violation or to suspend Consumers Power Company's use of the general license for dry cask storage at Palisades. To that extent, the petition is denied.

DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

I. INTRODUCTION

On September 19, 1995, the organizations Don't Waste Michigan and Lake Michigan Federation (Petitioners) filed a petition pursuant to section 2.206 of

Title 10 of the *Code of Federal Regulations* (10 C.F.R. § 2.206) requesting that the U.S. Nuclear Regulatory Commission (NRC) (1) find that Consumers Power Company (Licensee) violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, (2) suspend the Licensee's use of the general license provisions related to dry cask storage of spent nuclear fuel, (3) require a substantial penalty be paid by the Licensee, and (4) conduct hearings related to unloading procedures for dry storage casks at Palisades.

On September 30, 1996, the Petitioners amended the petition by including additional information in support of their position that the Licensee did not have a workable unloading procedure before loading the thirteen dry storage casks currently in the Palisades independent spent fuel storage installation (ISFSI).

The petition has been referred to me pursuant to section 2.206. The NRC letter dated October 24, 1995, to Dr. Sinclair and Mr. Skavroneck, on behalf of the Petitioners, acknowledged receipt of the petition. Notice of receipt was published in the *Federal Register* on October 31, 1995 (60 Fed. Reg. 55,388).

On the basis of the NRC Staff's evaluation of the issues and for the reasons given below, the Petitioners' requests are granted in part and denied in part.

II. BACKGROUND

NRC regulations contain a general license that authorizes nuclear power plants licensed by the NRC, such as Palisades, to store spent nuclear fuel at the reactor site in storage casks approved by the NRC. (See 10 C.F.R. Part 72, Subpart K.) In regard to dry cask storage of spent nuclear fuel at Palisades, the Licensee opted to use the VSC-24 Cask Storage System designed by Sierra Nuclear Corporation. The VSC-24 Cask Storage System was added to the list of NRC-certified casks in May 1993 (58 Fed. Reg. 17,948). The associated certificate of compliance, Certificate No. 1007, specifies the conditions for use of VSC-24 casks under the general license provisions of Part 72. Section 1.1.2, "Operating Procedures," in the certificate of compliance for the VSC-24 casks, requires that licensees prepare an operating procedure related to cask unloading. Specifically, the condition states

Written operating procedures shall be prepared for cask handling, loading, movement, surveillance, and maintenance. The operating procedures suggested generically in the SAR [safety analysis report] are considered appropriate, as discussed in Section 11.0 of the SER [safety evaluation report], and should provide the basis for the user's written operating procedures. The following additional written procedures shall also be developed as part of the user operating procedures:

1. A procedure shall be developed for cask unloading, assuming damaged fuel. If fuel needs to be removed from the multi-assembly sealed basket (MSB), either at the end of service life or for inspection after an accident, precautions must be taken against

the potential for the presence of oxidized fuel and to prevent radiological exposure to personnel during this operation. This activity can be achieved by the use of the Swagelok valves, which permit a determination of the atmosphere within the MSB before the removal of the structural and shield lids. If the atmosphere within the MSB is helium, then operations should proceed normally, with fuel removal, either via the transfer cask or in the pool. However, if air is present within the MSB, then appropriate filters should be in place to permit the flushing of any potential airborne radioactive particulate from the MSB, via the Swagelok valves. This action will protect both personnel and the operations area from potential contamination. For the accident case, personnel protection in the form of respirators or supplied air should be considered in accordance with the licensee's Radiation Protection Program.

The Licensee for Palisades began loading casks in May 1993 after implementing pertinent certificate conditions, including those in section 1.1.2.

In July 1994, the Licensee discovered radiographic indications of possible defects in a weld in multiassembly sealed basket (MSB) No. 4. MSB No. 4 had been loaded with spent fuel earlier that month and placed, inside a ventilated concrete cask, on the ISFSI storage pad. The Licensee evaluated the flaw indications and determined that the MSB continued to meet its design basis and was capable of safely storing spent fuel for the duration of the certificate (20 years). Nevertheless, the Licensee stated that MSB No. 4 would be unloaded to support additional inspections and evaluations related to its future use.¹ In preparation for the unloading of MSB No. 4, the Licensee reviewed the unloading procedure issued in May 1993 (Revision 0) and identified several technical questions. A revision of the unloading procedure (Revision 1) was subsequently developed to resolve the identified technical questions.

The technical questions and the associated procedural changes were discussed during meetings with the NRC Staff, and additional information was provided in submittals from the Licensee to the NRC. Evaluation of the revised unloading procedure by the NRC Staff was initially made through the review of submittals from the Licensee and has continued through an inspection of the Licensee's revised unloading procedure.

As a result of its inspections and reviews, the NRC Staff recognized that some licensees, including Consumers Power Company, had developed unloading procedures that tended to be simplistic and lacked sufficient details and contingencies. In order to address these issues, an item related to cask loading and unloading procedures was added to the NRC dry cask storage action plan that was implemented in July 1995. Some issues, such as the thermal-hydraulic

¹ The schedule for unloading MSB No. 4 remains indefinite. The Staff has recently learned that the Licensee may postpone the unloading until a multipurpose cask is available. This would allow the spent fuel currently stored in MSB No. 4 to be transferred to a cask that would support both storage and transportation of the spent fuel. The NRC Staff is reviewing this plan and will initiate discussions pertaining to this matter with the Licensee and other affected parties.

behavior of casks during the unloading process, were included largely as a result of questions related to the original unloading procedure at Palisades. Experience at other facilities using storage and transportation casks resulted in the identification of other issues. For example, as a result of the turbidity of the spent fuel pool during the unloading of a transportation cask at the Shearon Harris Nuclear Power Plant, the NRC Staff assessed the potential for and significance of deposits on fuel assembly surfaces becoming loose during the unloading of dry storage casks. Evaluations and inspections were used to resolve these issues for specific facilities, and revisions to NRC guidance documents have been prepared to resolve generic concerns.

Completion of the NRC inspection of the revised unloading procedure for Palisades was postponed following an event at the Point Beach Nuclear Plant.² Following the hydrogen ignition event at Point Beach, the NRC issued confirmatory action letters (CALs) to those licensees using or planning to use VSC-24 casks for the storage of spent nuclear fuel (i.e., licensees for Point Beach, Palisades, and Arkansas Nuclear One). The CALs document the licensees' commitments not to load or unload a VSC-24 cask without resolution of material compatibility issues identified in NRC Bulletin 96-04, "Chemical, Galvanic, or Other Reactions in Spent Fuel Storage and Transportation Casks," and confirmation of corrective actions by the NRC.³

The NRC Staff is continuing to review the bulletin responses and corrective actions for the Palisades facility, and, therefore, the Licensee is restrained from loading or unloading additional VSC-24 casks. Completion of the ongoing NRC inspection of the revised unloading procedure at Palisades will be coordinated with the Staff's review of the Licensee's response to the bulletin. Further, the NRC has committed to state officials and members of the public that the exit meeting for the inspection at Palisades will be open to the public, the meeting will be noticed sufficiently in advance to allow interested parties to attend, and the NRC Staff will allocate time to discuss issues with the public following the meeting with the Licensee.

III. DISCUSSION

The petition requests four actions by the NRC on the basis of the contention that the original unloading procedure (Revision 0) implemented by the Licensee was inadequate, and therefore, the Licensee violated NRC regulations requiring

² On May 28, 1996, a hydrogen gas ignition occurred during the welding of the shield lid on a VSC-24 cask at the Point Beach Nuclear Plant. The hydrogen was formed by a chemical reaction between a zinc-based coating (Carbo Zinc 11) and the borated water in the spent fuel pool.

³ On December 3, 1996, the NRC Staff informed the Licensee for the Arkansas Nuclear One facility in Russellville, Arkansas, that it had completed its reviews and inspections associated with that facility and found that the Licensee had satisfactorily completed the commitments documented in the CAL. Shortly thereafter, the Licensee initiated cask-loading activities.

the Licensee, prior to using an approved cask, to establish that all conditions in a dry storage cask certificate of compliance have been met (*see* 10 C.F.R. § 72.212(b)(2)).

1. Determine That the Licensee Violated NRC Requirements

In support of the petition's contention that the Licensee violated NRC requirements related to the original unloading procedure, the Petitioners claim that issues identified in Licensee documents dated November 11, 1994, and June 2, 1995, regarding revisions to the unloading procedure to support the planned unloading of Cask No. 4, demonstrate that the original procedure was inadequate. The amendment to the petition filed on September 30, 1996, included issues related to material compatibility identified in NRC Bulletin 96-04 as additional evidence that the Licensee's original unloading procedure was inadequate.

The primary information offered by the Petitioners in support of their claim that the original procedure violated NRC requirements is identified in the Licensee's document dated November 11, 1994. Although the issues identified by the Petitioners have been represented by the Licensee as improvements or enhancements to the original unloading procedure to support the planned unloading of Cask No. 4 at Palisades, a potential inference that might be drawn from the November 11 document is that the original unloading procedure could not adequately support the unloading of Cask No. 4. However, the Licensee's letter dated December 29, 1994, affirmed the Licensee's position that the original unloading procedure was adequate, and therefore complied with the certificate of compliance. Additional information, including the revised unloading procedure and the supporting engineering analyses, was provided in the Licensee's submittal to the NRC dated June 2, 1995. The NRC Staff requested additional information from the Licensee, and that information was provided by the Licensee in submittals dated October 16, 1995, December 20, 1995, and July 19, 1996.

On the basis of its review, the NRC Staff concluded that, had the Licensee attempted to unload a cask using the original unloading procedure, certain deficiencies associated with the original procedure would have prevented completion of the unloading process. The original unloading procedure's administrative limit for maximum cask pressure would have prevented the Licensee from establishing a continuous cooling cycle because the internal cask pressure would not have been sufficient to force steam to the outlet of the discharge piping at the bottom of the spent fuel pool. Other weaknesses in the original unloading procedure that would have hampered cask unloading included a restrictive venting capacity due to reliance upon a small vent line with an installed Swagelok fitting, scant guidance for personnel performing tasks such as drawing a gas sample from the MSB to check for damaged fuel, and several examples of references to

the wrong step within the procedure. Such deficiencies and weaknesses would have required the Licensee to suspend activities at one or more times during the unloading process in order to evaluate the problems encountered and implement necessary revisions to the procedure. Therefore, because the original unloading procedure would have required revision in order to complete the unloading process, this was a violation of requirements that all activities affecting quality be prescribed by procedures appropriate for the circumstances and that procedures are reviewed for adequacy. (See Criteria V and VI in Appendix B to 10 C.F.R. Part 50.)⁴ However, the Staff also determined that the deficiencies in the original unloading procedure would not have challenged the integrity of the cask or fuel contained in the cask and that the Licensee would have ultimately been able to safely unload a cask. Thus, given the limited safety significance of the procedural deficiencies and the fact that the Licensee identified and corrected the deficiencies, the NRC exercised its discretion to refrain from issuing a Notice of Violation or a civil penalty for the violation.

The purpose and objective of the NRC's enforcement program are focused on using enforcement actions (1) as a deterrent to emphasize the importance of compliance with requirements, and (2) to encourage prompt identification and prompt, comprehensive correction of violations. Mitigation of enforcement sanctions, such as refraining from issuing a civil penalty and/or a Notice of Violation, is described in section VII.B. of the "General Statement of Policy and Procedures for NRC Enforcement Actions (Enforcement Policy)," for those cases in which a licensee identifies a problem and corrects it within a reasonable time. These mitigating factors were applicable to the subject Severity Level IV violation pertaining to the original unloading procedure at Palisades and the violation was, therefore, dispositioned as a Noncited Violation.⁵

As noted, the Licensee, in various correspondence, took the position that the original unloading procedure was adequate and that subsequent changes incorporated into the revised procedure were enhancements based on lessons learned from operating experience and additional evaluations. Several statements in the Licensee's correspondence appear to assert that unloading procedures for

⁴ Section 1.1.3 of the certificate of compliance for the VSC-24 cask states that activities at the ISFSI shall be conducted in accordance with the requirements of 10 C.F.R. Part 50, Appendix B. Requirements related to quality assurance for ISFSIs are also contained in Subpart G to 10 C.F.R. Part 72. The requirements of Criteria V and VI in Appendix B to 10 C.F.R. Part 50 are the same as the requirements stated in 10 C.F.R. §72.150 and 10 C.F.R. §72.152. In the case of the original cask unloading procedure at Palisades, the number of problems in the original procedure and the failure of the Licensee to identify these problems during reviews performed prior to approval of the procedure resulted in the finding that a violation of NRC regulations had occurred. This finding is documented in NRC Inspection Report 50-255/96014.

⁵ Although the NRC Staff has identified weaknesses and deficiencies in the unloading procedure developed by the Licensee, these problems resulted from the Licensee giving insufficient consideration to the complexity of the activity. As part of its evaluation pertaining to the mitigation of enforcement sanctions, the NRC Staff concluded that the Licensee had not knowingly and willfully violated NRC requirements related to having an unloading procedure for dry storage casks as was claimed by the Petitioners.

dry storage casks do not need to maintain fuel integrity during the unloading process in order to satisfy requirements of the certificate of compliance or NRC regulations. The NRC Staff disagrees with this interpretation. NRC requirements mandate that the unloading process should be developed with due consideration to maintaining fuel integrity (*see* 10 C.F.R. §§ 72.122(h), 72.122(l), and 72.236(h)). Unloading activities are required to prevent gross ruptures of the fuel cladding in order to prevent operational safety problems. Unloading procedures are also required to include contingencies in case fuel cladding has degraded during storage such that additional measures are necessary to address increased radiological hazards during the unloading process. The NRC Staff has concluded that the original unloading procedure would have supported unloading of undamaged fuel assemblies without causing a significant loss of fuel cladding integrity.

The issues identified by the Licensee in the document of November 11, 1994, and for which the Petitioners claim that the original unloading procedure was inadequate, are addressed below.

MSB Cooling Skid

The Licensee modified the configuration of the fill and vent piping and components from that used in the original unloading procedure. An increase in the venting capacity and the use of the previous vent path for instrumentation necessitated these modifications. The original unloading procedure included steps to remove a gas sample for analysis, connect the venting arrangement to the spent fuel pool, and connect the cooling water supply from the spent fuel pool to the vacuum drying system water pump and the MSB drain line. Neither the Petitioners nor the NRC Staff have identified fundamental safety concerns with the arrangement used in the original unloading procedure.

Thermal-Hydraulic Modeling

In order to verify that undamaged fuel could be safely removed from MSB No. 4 and to support preparing the revised unloading procedure, the Licensee performed multiple analyses by modeling the thermal-hydraulic behavior of the cask during the cooling process. These analyses were used to estimate the pressure response of the cask, to estimate the time requirements for cooling the cask, and to select the appropriate venting capacity in the revised unloading procedure. The analyses performed by the Licensee showed that the venting capacity available for the original unloading procedure would have supported the cooling and refill of the MSB. These analyses also showed that cask unloading using the original procedure would have taken significantly longer than the

time estimated for the revised procedure. However, no violations of regulatory requirements would have resulted from taking longer to complete the unloading process. The Licensee's performance of the analyses during preparation of the revised unloading procedure highlighted the lack of supporting analyses or evaluations for the original version of the unloading procedure and contributed to the Staff's finding that the Licensee had violated the requirements of Criterion VI of Appendix B to 10 C.F.R. Part 50 by issuing the original procedure without sufficient reviews to determine its adequacy.

Maximum Allowable Pressurization

During its review of the unloading procedure, the Licensee determined that the cask should be limited to 38.3 psig in order to satisfy criteria established by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. This value is conservative with respect to the pressure that would challenge the structural integrity of the MSB. The original unloading procedure included precautions to maintain the internal pressure less than 10 psig and thus was bounded by the subsequent evaluations and the acceptable conditions specified in the revised procedure.

However, the Staff has concluded that the procedural limitation of 10 psig in the original unloading procedure would have introduced problems in establishing the cooling cycle because the pressure would have been too low to force steam or water from the MSB to the coolant discharge at the bottom of the spent fuel pool. These problems, in turn, likely would have prevented completion of cask unloading without revising the procedure. However, the problems would not have challenged the integrity of the cask or otherwise introduced a safety concern. Rather, upon identifying the problems caused by the administrative limit of 10 psig, the Licensee could have revised the procedure, proceeded to establish the desired cooling cycle, and completed unloading of a cask.

Fuel Integrity During Cooling

In support of preparing the revised unloading procedure, the Licensee, with support from the nuclear fuel supplier, analyzed the allowable temperature differences between fuel assembly components and cooling water. Additional analyses determined maximum expected fuel temperatures before establishing the cooling flow to the MSB. These evaluations and the expected thermal response of the MSB and fuel assemblies following the introduction of coolant during the unloading procedure confirmed that thermal shocking would not challenge the integrity of the fuel assemblies in the MSB.

Fuel Heatup While the MSB Is in the Transport Cask

As previously mentioned, the Licensee and the contractors analyzed the maximum fuel temperatures that could be experienced during the time that the MSB is in the transfer cask before establishing the cooling flow from the spent fuel pool to the MSB interior. These analyses were performed for various heat loads and time periods and included conservative analysis assumptions. The analyses showed that fuel temperature limits would not be exceeded before establishing the cooling flow from the spent fuel pool using the original (or the revised) unloading procedure.

MSB Lid Removal

The revised unloading procedure uses more advanced cutting technologies in order to incorporate operating experience, ease lid removal, and minimize personnel exposure. The capability of the original unloading procedure to control removal of the MSB lid was verified by the Licensee during mockups before loading casks at Palisades. Some of the improvements in the revised procedure are related to problems experienced during that exercise. However, the Licensee has demonstrated that techniques for lid removal in the original unloading procedure were adequate to remove the lids and provide access to the fuel assemblies in compliance with NRC requirements.

Criticality Prevention

The original unloading procedure included steps for sampling the spent fuel pool boron concentration and establishing time limits for lid removal following termination of recirculation flow. The NRC Staff considers the original procedure's lack of a detailed contingency for preventing bulk boiling, as was incorporated into the revised procedure, a procedural weakness. However, the weakness does not translate into a concern related to public health and safety or personnel exposure because of the inherent conservatism related to reactivity control for storage casks, such as assuming nonirradiated fuel assemblies in supporting calculations, and the time that would be available for the Licensee to implement compensatory actions.

Section 50.59 Evaluation Related to the MSB Cooling Skid

Modifications to the MSB cooling skid led the Licensee to question whether an unreviewed safety question was introduced by a possible break of the return line to the spent fuel pool. Upon further review, the Licensee determined that the cooling system configuration did not create the possibility for an

accident or a malfunction of a different type than any evaluated previously in the facility's final safety analysis report or otherwise exceed the criteria that define an unreviewed safety question under 10 C.F.R. § 50.59. The Licensee has stated that this conclusion is also applicable for the original unloading procedure. Neither the Petitioners nor the NRC Staff have identified a safety or compliance issue regarding the Licensee's conclusion.

Rigging Procedures

The Licensee investigated several minor changes to the rigging process during the development of the revised unloading procedure. These changes are intended to ease the operations and reduce personnel radiation exposures. However, the Staff determined that the guidance provided by the original procedure, combined with expected skill of Licensee personnel, would have been adequate to control the lifting of the various loads associated with unloading a cask.

Helium Sampling

During the development of the revised unloading procedure, the Licensee recognized possible difficulties in drawing a gas sample from the MSB before initiating the cooling operation. The original unloading procedure included a step to "remove a gas sample from the cask," but did not include the more detailed guidance that is incorporated into the revised procedure. This lack of guidance in the original procedure may have resulted in Licensee personnel underestimating the helium concentration in the MSB. The original unloading procedure included provisions to suspend the unloading process if the sampling indicated air within the MSB. Therefore, this potential weakness in the original unloading procedure would not have introduced adverse safety consequences but instead may have erroneously caused the Licensee to suspend cask unloading activities in order to conduct management briefings and determine compensatory measures due to the potential oxidation of the fuel cladding.

Summary for (1) "Determine That the Licensee Violated NRC Requirements"

On the basis of its evaluation of the Licensee's original unloading procedure, the NRC Staff affirmed the Licensee's determination that the procedure had numerous weaknesses. The Staff believes that the administrative limit of 10 psig for maximum cask pressure and other identified weaknesses in the original unloading procedure would have required the Licensee to suspend activities at one or more times during the unloading process in order to evaluate the problems encountered and implement necessary revisions to the procedure. Given the

number of weaknesses in the original unloading procedure and the Licensee's failure to perform the necessary levels of review and analysis to have determined its adequacy prior to its issuance, the NRC Staff found that the Licensee violated NRC requirements contained in Criteria V and VI of Appendix B to 10 C.F.R. Part 50. The first request in the petition, to find that the Licensee violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, is therefore granted. The violation was dispositioned as a Noncited Violation consistent with the NRC Enforcement Policy.

The Petitioners' amendment to the petition dated September 30, 1996, claims that the original unloading procedure was inadequate because of its lack of controls related to the generation of hydrogen gas from a chemical reaction between coatings used on the VSC-24 casks and the borated water in the spent fuel pool. The chemical reactions and hydrogen issue were identified following an event that occurred during welding of the shield lid on a spent fuel storage cask at the Point Beach plant on May 28, 1996. The need to include special precautions in the unloading procedures for VSC-24 casks in order to prevent ignition of hydrogen gas had not been recognized by the cask vendor, licensees, or the NRC Staff prior to the event at Point Beach. The Licensee's original unloading procedure was developed before the event at Point Beach caused the recognition of the potential for ignition of hydrogen gas during the unloading of a VSC-24 cask. Accordingly, the NRC cannot reasonably fault the Licensee, by taking enforcement action, for not having accounted for an issue that was not known to the NRC Staff, the vendor, or the Licensee.

2. Suspend the Licensee's Use of the General License

On the basis of the contention that the Licensee's unloading procedure was inadequate, the Petitioners requested that the Licensee's use of the general license provisions of 10 C.F.R. Part 72 be suspended until such time as the significant issues described in the Licensee's document of June 2, 1995, have been resolved, the NRC has documented its review, approved the Licensee's revised procedure, and Cask No. 4 has been safely unloaded.

The Licensee's submittal of June 2, 1995, provided Revision 1 of the unloading procedure and supporting engineering analyses. The petition includes specific questions and comments regarding the Licensee's submittal of June 2, 1995, in support of the Petitioners' position that actions taken by the Licensee had not resolved significant safety issues. In response to questions from the NRC Staff, the Licensee provided additional information related to the submittal dated June 2, 1995. The subsequent submittals were dated October 16 and Decem-

ber 20, 1995.⁶ In addition, the NRC Staff was reviewing and will continue to review the issues included in the submittal dated June 2, 1995, as part of the ongoing NRC inspection of the revised unloading procedure. Further, as described above, the NRC Staff has already concluded that the deficiencies in the original unloading procedure violated NRC requirements, and that the violation should be treated as a Noncited Violation because of the limited safety significance of the procedural deficiencies and consideration of mitigating factors defined in the NRC Enforcement Policy.

On June 3, 1996, the NRC issued CALs to the Licensee and other users of the VSC-24 cask system. The CALs confirmed a commitment made by each licensee to the NRC Staff to refrain from loading or unloading a VSC-24 cask pending completion of investigations and implementation of corrective actions. On June 27, 1996, a supplement to the CAL was issued to confirm a further commitment by the Licensee to refrain from placing a VSC-24 cask into the spent fuel pool until after the NRC has reviewed and accepted applicable responses to NRC Bulletin 96-04 and verified corrective actions taken in response to the bulletin. CALs are among the administrative mechanisms that the NRC uses to supplement Notices of Violation, civil penalties, and orders in its enforcement program. CALs may be issued to confirm an agreement by a licensee or vendor to take certain actions to remove significant concerns about health, safety, safeguards, or the environment. The NRC expects licensees and vendors to adhere to stated obligations or commitments included in a CAL and will not hesitate to issue appropriate orders to ensure that such obligations or commitments are met.

The NRC issued the CALs and Bulletin 96-04 in recognition of the fact that the generation of hydrogen gas during the loading of VSC-24 casks at Point Beach was evidence that possible material compatibility issues were not fully addressed during the design or certification reviews associated with some spent fuel storage and transportation casks. It is not unusual for the NRC to use such administrative mechanisms to address generic issues. Given that the generation of flammable gases was a particular concern for the users of the VSC-24 cask system, those licensees, including Consumers Power Company, were issued CALs to confirm that VSC-24 casks would not be loaded, unloaded, or otherwise placed in a spent fuel pool before the resolution of issues identified in NRC Bulletin 96-04.

In regard to those issues contained in the amendment to the petition, the existing CAL documents the Licensee's commitment to refrain from loading, unloading, or otherwise placing a VSC-24 cask into the spent fuel pool pending

⁶These documents, like all others identified in this Decision, are available to the public at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and from the local public document room located in the Van Wylen Library at Hope College in Holland, Michigan.

verification of corrective actions related to NRC Bulletin 96-04. Given the Licensee's commitment not to load or unload a cask, the NRC does not, in this instance, envision the need to issue an order as requested by the Petitioners.

Those portions of the petition that address NRC's approval of the revised unloading procedure and include the unloading of Cask No. 4 as a condition for resuming normal activities under the general license are denied. The NRC Staff does not generally review and approve specific procedures developed by licensees. NRC regulations, facility licenses, and NRC-approved quality assurance programs require licensees to establish and maintain a formal process for the preparation and issuance of procedures and changes thereto. NRC assessments of Licensee procedures are generally conducted as part of the NRC's inspection program. In this instance, given the Licensee's commitment to refrain from action until completion of NRC's inspections, the inspections will confirm that applicable regulatory requirements are satisfied before use of the Licensee's revised unloading procedure. As previously mentioned, the NRC Staff will resume its inspection activities related to the revised unloading procedure when the Licensee has resolved the issues identified in NRC Bulletin 96-04. If, and provided that, there is satisfactory resolution of the issues identified in NRC Bulletin 96-04 and any other questions that may arise during the inspection of the Licensee's revised unloading procedure, then the NRC will have reasonable assurance of the Licensee's compliance with regulatory requirements. Accordingly, the Staff would not have any basis or reason to require the Licensee to unload Cask No. 4 before resuming normal activities under the general license at Palisades. Thus, following resolution of all issues to the satisfaction of the NRC Staff, the determination of the sequence of events related to the planned unloading of Cask No. 4 and the loading of additional casks at Palisades will be at the discretion of the Licensee. As noted above, the NRC Staff has committed to open the exit meeting with the Licensee to the public at the conclusion of the ongoing inspection and will document its review in an inspection report that will be available for public review.

3. Require the Licensee to Pay a Substantial Penalty

On the basis of the contention that the Licensee's original unloading procedure was inadequate, the Petitioners requested that the NRC levy a monetary penalty of \$1.3 million against the Licensee. As previously mentioned, the NRC Staff determined that, although finding that the deficiencies in the original unloading procedure violated NRC requirements, the violation satisfied the criteria to be treated as a Noncited Violation because of the limited safety significance of the procedural deficiencies and consideration of mitigating factors defined in the NRC Enforcement Policy. Enforcement sanctions, including issuance of civil penalties and orders, are normally used as a deterrent to emphasize the impor-

tance of compliance with requirements, and to encourage prompt identification and prompt, comprehensive correction of violations. In this case, the Licensee identified the deficiencies that constituted the violation of NRC requirements and subsequently revised the unloading procedure to resolve the identified technical issues. It was the judgment of the NRC Staff that the violation should be dispositioned as a Noncited Violation in order to convey the appropriate regulatory message in this case. Further, even if the violation had been cited, it is the NRC Staff's judgment that it would have been categorized as a Severity Level IV, for which a civil penalty would not ordinarily be issued.

In regard to the hydrogen issues identified in the amendment to the petition, the NRC Staff has utilized an administrative mechanism in its enforcement policy (CALs) to ensure that the Licensee takes certain actions to resolve this safety concern. As previously mentioned, the specific contentions raised by the Petitioners pertaining to hydrogen issues and the original unloading procedure do not warrant additional enforcement actions by the NRC.

4. Allow Petitioners to Review Procedure, Require NRC to Hold Hearings, and Allow Petitioners to Participate in Proceedings

The original unloading procedure and the first revision of the unloading procedure have been provided to the Petitioners. In addition, correspondence between the NRC and the Licensee regarding the procedures has been furnished to the Petitioners. Further, due to the course of events following the Licensee's decision to unload Cask No. 4 — including the Licensee's evaluation of the original unloading procedure, identification of improvements to the unloading process, and the submittal of this petition — the original and first revision of the unloading procedure and related documentation have been available for public review. Accordingly, Petitioners have had the opportunity to review the unloading procedure. Further, as noted elsewhere, it is the NRC Staff's intention to hold a public meeting in the vicinity of the Palisades Nuclear Plant at the conclusion of its ongoing inspection of the Licensee's revised unloading procedure.

The Petitioners' request for hearings and participation in proceedings has been addressed in previous correspondence with the Petitioners and the Attorney General for the State of Michigan. In that correspondence, the NRC Staff explained that neither the general licensing provisions of 10 C.F.R. Part 72 nor the petition process described in section 2.206 require the NRC to institute a proceeding. Under section 2.206, the NRC office director responsible for the subject matter of the request "shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision."

As set forth in this Director's Decision, the NRC has determined not to institute the proceeding as requested by the petition.

IV. CONCLUSION

Petitioners requested that the NRC determine that Consumers Power Company violated NRC requirements, suspend the Licensee's use of the general license, impose a substantial penalty, and hold hearings related to the Licensee's unloading procedure for dry storage casks. In response, the NRC determined that the Licensee violated NRC requirements insofar as the original unloading procedure (Revision 0) would have required revision in order to have completed the unloading process. Further, NRC Staff determined that the violation, which was identified and corrected by the Licensee, should be treated as a Noncited Violation consistent with the NRC's Enforcement Policy. Therefore, to this extent, Petitioners' request for a determination that the Licensee violated NRC requirements is granted. The available information is sufficient to conclude, however, that no substantial safety issue has been raised regarding the operation of Palisades or its associated ISFSI given the Licensee's commitment not to load or unload a cask until the NRC Staff is satisfied that the Licensee's procedures are adequate. Therefore, the NRC has determined that no adequate basis exists for granting Petitioners' requests for suspension of Consumers Power Company's use of the general license for dry cask storage of spent nuclear fuel at Palisades or imposition of a civil penalty.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 C.F.R. § 2.206(c).

As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

FOR THE NUCLEAR
REGULATORY COMMISSION

Frank J. Miraglia, Jr., Acting
Director
Office of Nuclear Reactor
Regulation

Dated at Rockville, Maryland,
this 23d day of January 1997.