(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of January, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–670 Filed 1–12–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[IA 97–074]

Mr. Darrel T. Rich; Order Prohibiting Involvement in NRC-Licensed Activities

I

Mr. Darrel T. Rich (Mr. Rich) was formerly employed by Consumers Power Company (CPCo or Licensee) at the Big Rock Point Nuclear Plant (BRPNP) as a radiation protection technician. CPCo is the holder of License No. DPR–6 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. This license authorized CPCo to operate BRPNP in accordance with the conditions specified therein.

II

On October 18, 1996, the BRPNP assistant plant manager received allegations that routine radiological surveys required by plant procedures were not being performed by radiation protection technicians. An investigation was conducted by the Licensee in which radiation survey records were compared with security access records (i.e., key card entries). The licensee concluded that in several instances the person recording radiation survey data, Mr. Darrel T. Rich, had either not entered the areas where the surveys were required to be conducted or had not entered for a period of time long enough to conduct the survey. The survey records, when compared to the security access records, show that Mr. Rich documented that the following radiation surveys were made and that he could not have performed these surveys: on July 21, 1996, a required daily air sample on the 585' level of the BRPNPP; and the monthly survey for the Radwaste Building dated September 15, 1996. The Commission's regulations, specifically 10 CFR 20.1501(a), ''Surveys and Monitoring,'' requires a licensee to perform surveys to determine the radiological conditions at an NRC-licensed facility. 10 CFR 20.2103(a), ''Records of Surveys,'' further requires that a licensee maintain records showing the results of the surveys. Furthermore, BRPNPP Technical Specification, Section 10, ''Administrative Controls,'' Paragraph 6.11, ''Radiation Protection Program,'' requires that procedures for personnel radiation protection shall be prepared consistent with the requirements of 10 CFR Part 20, and shall be approved, maintained and adhered to all operations involving personnel radiation exposure. BRPNPP Procedure No. RP–29, ''Radiological Surveys,'' is the plant procedure that implements Technical Specification Section 10, Paragraph 6.11. Paragraphs 5.2.2 through 5.4.4 of Procedure RP–29 specify the locations where radiological surveys are to be conducted and requires that the results of each survey be recorded. 10 CFR 50.9(b), ''Completeness and Accuracy of Information,'' requires that information required by NRC regulations be maintained by an NRC licensee and the information shall be complete and accurate in all material respects.

The Licensee, on the basis of its investigation, concluded that Mr. Rich had falsified records of various radiological surveys. Mr. Rich resigned from BRPNP, effective November 7, 1996. As of November 8, 1996, Mr. Rich's unescorted access was unfavorably terminated for falsification of company records. The NRC Staff reviewed the investigative information furnished by the Licensee and concluded that Mr. Rich deliberately falsified radiological survey data at BRPNP.

Prior to the 1996 events, the NRC Office of Investigations (OI) conducted an investigation (OI No. 3–91–018) into allegations that during October 1991, Mr. Rich did not take smear samples for radioactive contamination, but recorded the results as though he had taken the samples. The Licensee took disciplinary action against Mr. Rich at that time. The NRC did not take enforcement action against Mr. Rich because he admitted the violation and in consideration of the employment action taken by the Licensee involving Mr. Rich (EA 92–235).

III

Based on the above, it appears that Darrel T. Rich, a former employee of the Licensee, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR 20.1501 and 10 CFR 50.9(a). It further appears that Mr. Rich deliberately provided to the Licensee information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 50.5(a)(2), ''Deliberate Misconduct.'' The information is material to the NRC because 10 CFR 20.1501 and 20.2103 and 10 CFR 50.9 require these radiation surveys to be performed and that accurate records of them be maintained. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Rich's action in causing the Licensee to violate 10 CFR 20.1501, 20.2103 and 10 CFR 50.9(a) have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Rich were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Rich be prohibited from any involvement in NRC-licensed activities for a period of three years from the effective date of this Order, and if he is currently involved with another licensee in NRC-licensed activities at that time, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Rich is required to notify the NRC of his first employment in NRC-licensed activities in the three years following the prohibition period.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o,182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *It is hereby ordered that*:

1. Darrel T. Rich is prohibited for three years from the effective date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of three years after the three year period of prohibition has expired, Mr. Rich shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Rich shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

V

In accordance with 10 CFR 2.202, Darrel T. Rich must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Rich or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Suite 255, Lisle, IL 60532–4351, and to Mr. Rich if the answer or hearing request is by a person other than Mr. Rich. If a person other than Mr. Rich requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Rich or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 5th day of January 1998.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Acting Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 98–752 Filed 1–12–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Policy and Procedure for Enforcement Actions; Deliberate Misconduct Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its ''General Statement of Policy and Procedure for NRC Enforcement Actions'' to conform to modifications to the Deliberate Misconduct Rule. These modifications extend that Rule to applicants for NRC licenses, applicants for, and holders of, certificates of compliance, early site permits, standard design certifications, or combined licenses issued under part 52, applicants for or holders of certificates of registration, quality assurance approvals, and the employees, contractors, subcontractors, and consultants of those persons. By a separate action published in this issue of the **Federal Register**, the Commission has issued a final rule amending 10 CFR parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150.

EFFECTIVE DATE: This action is effective on February 12, 1998.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2741.

SUPPLEMENTARY INFORMATION: The Commission's ''General Statement of Policy and Procedure for NRC Enforcement Actions'' (Enforcement Policy or Policy) was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On June 30, 1995 (60 FR 34381), the Enforcement Policy was revised in its entirety and was also published as NUREG–1600. The Policy primarily addresses violations by licensees and certain non-licensed persons, as discussed further in footnote 3 to Section I, Introduction and Purpose, and in Section X: Enforcement Action Against Non-licensees.

The Deliberate Misconduct Rule was adopted in September 1991 and applies to any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee. The Deliberate Misconduct Rule placed licensed and unlicensed persons on notice that they may be subject to enforcement action for deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any of the Commission's requirements, or for deliberately providing to the NRC, a licensee, or contractor, information that is incomplete or inaccurate in some respect material to the NRC.

The final rulemaking expands the Deliberate Misconduct Rule, where it appears in 10 CFR parts 30, 40, 50, 60, 61, 70, 72, and 110, clarifies the scope of part 32 and adds the Rule to parts 52 and 71. This expansion arises out of a realization that the current Rule does not apply to applicants for NRC licenses, applicants for, or holders of, certificates of compliance, early site permits, standard design certifications, or combined licenses issued under part 52, applicants for or holders of certificates of registration, quality assurance program approvals and the