

*Estimated Burden Hours Per**Response: 5 minutes.**Frequency of Response: Reporting and Annually.**Estimated Total Annual Burden Hours: 567.**Estimated Total Annual Cost: N/A.*

By the National Credit Union Administration Board on May 5, 1999.

**Becky Baker,***Secretary of the Board.*

[FR Doc. 99-11738 Filed 5-10-99; 8:45 am]

BILLING CODE 7535-01-P

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 40-8912]

**Grace Estate****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Notice of opportunity for hearing concerning termination of source materials license SUA-1480 and release of the three grace sites in New Mexico for unrestricted use.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has accepted the Final Reclamation Report, submitted by the firm of Comeau, Maldegen, Templeman & Indall, LLP (CMT&I), representing the estate of Michael P. Grace, documenting the reclamation of the three Grace sites in New Mexico. Site 1 is located approximately 20 miles northeast of Gallup, New Mexico. Site 2 is located near Bibo, New Mexico. Site 3 is located approximately 20 miles northwest of Magdalena, New Mexico. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of the Grace Estate's reclamation plan, in accordance with the requirements of Title 10, Code of Federal Regulations (10 CFR) part 51. The conclusion of the EA was a Finding of No Significant Impact (FONSI) for the proposed site reclamation.

The NRC staff has determined that reclamation of the sites was performed in accordance with Amendment No. 1 to Source Materials License SUA-1480, which authorized the licensee, the estate of Michael P. Grace (CMT&I), to perform radiological cleanup and surface reclamation of three non-operating uranium extraction sites in New Mexico. Based on this determination, and in accordance with the licensee's request, Source Materials License SUA-1480 is hereby terminated and the three sites are released for unrestricted use.

**FOR FURTHER INFORMATION CONTACT:** Ken Hooks, Uranium Recovery and Low-Level Waste Branch, Mail Stop TWFN 7-19, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415-7777. E-mail: KRH1@NRC.GOV

**NOTICE OF OPPORTUNITY FOR HEARING:**

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served by delivering it personally, or by mail, to:

(1) The applicant, Estate of Michael P. Grace, in care of Jon J. Indall, Comeau, Maldegen, Templeman & Indall, LLP, Coronado Building, 141 E. Palace Avenue, Post Office Box 669, Santa Fe, New Mexico 87504-0669.

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays; or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding,

including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing request that is granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR part 2, subpart L.

Dated at Rockville, MD, this 5th day of May, 1999.

For the Nuclear Regulatory Commission.

**N. King Stablein,***Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 99-11819 Filed 5-10-99; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY COMMISSION**

[EA 95-009]

**Thermal Science, Inc.; Order Imposing Civil Monetary Penalty****I**

Thermal Science, Inc. (TSI) is the manufacturer and vendor of fire barrier products known generally as Thermo-Lag. TSI began marketing this product in the early 1980s to licensees of the United States Nuclear Regulatory Commission (NRC) for use in nuclear power plants. TSI represented that Thermo-Lag had undergone independent testing by Industrial Testing Laboratories, Inc. (ITL). Using ITL stationery, TSI issued reports in ITL's name, making it appear that the reports were written by ITL, when in fact they were written by TSI. Many NRC licensees thereafter purchased Thermo-Lag to meet the NRC's fire protection requirements, codified in 10 CFR 50.48 and appendix R to part 50.

**II**

In 1989 the NRC began receiving licensee reports of problems with installed Thermo-Lag. As part of a subsequent NRC investigation, TSI was questioned in the fall of 1991 about the testing and installation of Thermo-Lag. TSI continued to represent that its product had been independently tested by ITL. However, during an NRC inspection of TSI's facility in December

1991, it was learned that TSI, not ITL, had written the test reports, and that ITL had very limited involvement in the testing process. In 1992 the United States Department of Justice began a criminal investigation of the matter, resulting in indictments and a jury trial in the United States District Court for the District of Maryland in 1995. The jury acquitted TSI and TSI's President, Ruben Feldman, on all of the criminal charges. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the amount of \$900,000 was subsequently served upon TSI by letter dated October 1, 1996. The Notice sets forth nine violations of 10 CFR 50.5, the NRC's "Deliberate Wrongdoer" rule.

TSI delayed filing a response to the Notice while it sought a preliminary injunction of NRC's administrative process from the United States District Court for the Eastern District of Missouri. The District Court finally denied the injunction request and dismissed TSI's cause of action by opinion dated June 23, 1998, holding that TSI must exhaust its administrative remedies before seeking judicial relief. Thereafter, on July 7, 1998, TSI filed its answer to the Notice. In its answer, TSI set forth its legal objections to the Notice, and denied each of the 10 CFR 50.5 violations. TSI's appeal from the District Court's June 1998 decision is pending before the United States Court of Appeals for the Eighth Circuit. However, by order dated September 10, 1998, the appeals court denied TSI's motion to stay the NRC's administrative proceeding pending the appeal.

### III

After consideration of TSI's answer, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations of 10 CFR 50.5 occurred as stated in the Notice, and that the penalties proposed for the violations designated in the Notice should be imposed.

### IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

TSI pay civil penalties in the amount of \$900,000 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, TSI shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One

White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

### V

TSI may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If TSI fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the United States Attorney General for collection.

In the event TSI requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether TSI was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above; and

(b) whether, on the basis of such violations, this Order should be sustained.

Dated this 3rd day of May, 1999.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

### Appendix—Evaluation and Conclusion

On October 1, 1996, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) for violations of NRC requirements identified during an investigation of Thermal Science, Inc. (TSI). The Notice set forth nine violations (designated A through I) of 10 CFR 50.5. TSI's response to the Notice, filed on July 7, 1998, was devoted largely to two legal

objections to the Notice: (1) NRC lacks authority to impose a civil penalty on a non-licensee like TSI; and (2) NRC's administrative proceeding is criminal rather than civil, and thus violates the Double Jeopardy Clause of the United States Constitution. These objections repeat those made in TSI's request for a preliminary injunction, filed with the United States District Court for the Eastern District of Missouri. The district court dismissed TSI's injunction request in June 1998. The NRC staff has reviewed TSI's legal objections and finds that they do not bar this administrative action for the following reasons.

The question of whether the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (AEA) provides the NRC with authority to impose civil penalties on non-licensees was examined at the time 10 CFR 50.5 was promulgated. See 56 FR 40664-670 (August 15, 1991). As discussed therein, 10 CFR 50.5 was issued under the general authority of AEA sections 161b and 161i, pursuant to which the Commission may issue any regulation deemed necessary to protect public health. Absent from these statutory provisions is any limitation to whom such regulations may be made applicable. Moreover, in evaluating the general powers conferred on the Commission by Congress, federal courts have uniformly found the AEA's provisions quite broad. In passing the AEA, Congress enacted a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives.

*Siegel v. AEC*, 400 F.2d 778, 783 (D.C. Cir. 1968). See also *Power Reactor Development Co. v. International Union of Elec. Radio and Mach. Workers AFL-CIO*, 367 U.S. 396 (1961). In exercising its broad rulemaking authority, the Commission explicitly made 10 CFR 50.5 applicable to, among others, any "supplier" who provided to one or more NRC licensees "materials, or other goods or services," relating to licensed activities. 10 CFR 50.5(a). As detailed in the Notice, TSI qualifies as such a "supplier." Accordingly, TSI is properly subject to the regulation, even though TSI is not an NRC licensee.

TSI's Double Jeopardy argument is contrary to the Supreme Court's holding in *Hudson v. U.S.*, 118 S.Ct. 488 (1997). The Court there held that while a second "criminal prosecution" for the same conduct is prohibited, civil penalties based on the alleged criminal conduct may be lawfully imposed

unless "the clearest proof" shows that the statute authorizing the civil penalty can only be construed as a criminal sanction. *Hudson*, 118 S.Ct. at 493. In making this determination, only the "statute on its face" is to be evaluated (*Id.*, at 494), and if the statute confers sanction authority upon an administrative agency this is "prima facie evidence that Congress intended to provide for a civil sanction." *Id.*, at 495. In this regard, the Court distinguished between the "infamous punishment of imprisonment" imposed following a judicial trial, and money penalties. *Id.*, at 495-96.

Applying *Hudson* to the facts here, the October 1, 1996 Notice informed TSI that the NRC proposed to impose civil penalties pursuant to section 234 of the AEA, 42 U.S.C. 2282, and 10 CFR 2.205.<sup>1</sup> Reading AEA section 234, which is titled "Civil Monetary Penalties For Violations of Licensing Requirements," there can be no doubt that it provides for civil, not criminal, sanctions. Persons are subject to "civil" penalties of up to \$100,000 "to be imposed by the Commission." 42 U.S.C. 2282(a). Unpaid penalties imposed by the Commission "may be collected by civil action." 42 U.S.C. 2282(b). Even when a penalty matter is referred to the United States Attorney General for collection, the Attorney General is only "authorized to institute a civil action." 42 U.S.C. 2282(c). Section 234 provides only for monetary penalties, with no provisions for imprisonment, and does not contain the word "criminal."<sup>2</sup> Similarly, 10 CFR 2.205 provides only for the imposition of civil penalties, and specifies the procedures by which a person charged with violations may contest those violations by requesting an administrative hearing. Accordingly, any administrative action taken by the Commission against TSI pursuant to the Notice will necessarily be civil rather than criminal in nature. In these circumstances the Double Jeopardy Clause does not bar the administrative action even though it arises from some of the same conduct for which TSI was criminally tried in 1995.

With respect to the facts upon which the staff based its proposed action, TSI's response to the Notice denied the nine violations. The NRC's evaluation and

<sup>1</sup> 10 CFR 2.205 is the NRC regulation implementing the statutory authority of 42 U.S.C. 2282. The regulation was also issued under the authority, *inter alia*, of AEA sections 161 b, i, and o, 42 U.S.C. 2201 (b), (i), and (o). See preamble to 10 CFR Part 2.

<sup>2</sup> Section 234 thus stands in sharp contrast to the criminal provisions of the AEA, set forth in sections 221-223, 42 U.S.C. 2271-2273, which either refer to "criminal violations," or specify terms of imprisonment as punishment.

conclusion regarding TSI's factual denial are as follows:

#### *Restatement of Violation A*

A. Contrary to 10 CFR 50.5, TSI deliberately made statements in an October 5, 1991 letter to the NRC which it knew contained inaccurate and incomplete information material to the NRC, as evidenced by the following examples:

1. In its October 5, 1991 letter, TSI stated that Thermo-Lag had been ". . . extensively tested by independent testing laboratories on many occasions. . . ." See TSI Letter of October 5, 1991, at 1. TSI's statement was incomplete and inaccurate in that the NRC later determined during an inspection at TSI's offices that test reports bearing the logo of Industrial Testing Laboratories, Inc. (ITL) were actually drafted by TSI, typed by TSI, and issued by TSI. ITL's role was limited to having one of its representatives witness data acquisition on the date of the test, and verify furnace temperature readouts, without having had any involvement in the construction or approval of the test article. Thus, with respect to ITL, the statement that Thermo-Lag had been ". . . extensively tested by independent testing laboratories on many occasions. . . ." misrepresented the respective roles of TSI and ITL in Thermo-Lag testing.

2. In its October 5, 1991 letter, TSI stated that Thermo-Lag provides "a fire barrier of consistent performance[]" when installed "in accordance with the instruction manuals in concert with training programs of Thermal Science," and that this performance had "been proven by independent testing on multiple occasions." See TSI Letter of October 5, 1991, at 2. This statement was inaccurate in that most of the configurations tested by TSI, in those tests that were submitted to the NRC, were not installed in accordance with the TSI instruction manual.

3. In TSI's "Response To The United States Nuclear Regulatory Commission's Letter Dated 10 September 1991," attached to its October 5, 1991 letter, TSI provided results from 1986 tests conducted by Underwriter's Laboratory (UL) regarding ampacity derating tests of one-hour and three-hour Thermo-Lag fire barrier systems, and stated that the values obtained by the UL tests reflected "the most current and conservative results of tests . . ." and were "the most conservative information available to us."<sup>3</sup> See TSI Response at 6 and 12.

<sup>3</sup> This answer responded to NRC Question I.A.5., "What are ampacity deratings for 1-hour fire rated THERMO-LAG fire barrier systems[.]" and NRC

These statements were inaccurate in that TSI was aware of an alternate baseline UL ampacity derating test that was more current and provided more conservative values than the test results submitted to the NRC on October 5, 1991.

These statements were material to the NRC because they were made by TSI: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the nature of the testing performed to qualify Thermo-Lag for use in nuclear power plants; and (2) to influence the NRC's investigation into whether Thermo-Lag met NRC's fire barrier requirements and guidelines. (01011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—\$100,000

#### *Summary of TSI's Answer to Violation A*

In denying Violation A, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

#### *NRC Evaluation of TSI's Answer to Violation A*

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation A. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation A, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of \$100,000 should be imposed for Violation A.

#### *Restatement of Violation B*

B. Contrary to 10 CFR 50.5, during an October 17, 1991 meeting with the NRC Staff, Mr. Rubin Feldman, the President of TSI, deliberately made oral statements to the NRC that he knew

Question I.B.5., "What are ampacity deratings for 3-hour fire rated THERMO-LAG fire barrier systems[.]" See NRC letter to TSI dated September 10, 1991, Enclosure at 1.

contained inaccurate information material to the NRC. With respect to the participation of ITL in the fire barrier testing of Thermo-Lag, the following exchange took place:

Mr. West (NRC): You mentioned in your [October 5, 1991] letter—in fact, you provided us with an enclosure that identifies quite a few tests that had been sponsored, presumably, by TSI. It looks like the bulk of the tests were actually done at your facility, although there seemed to be some involvement of a testing outfit called ITL, Industrial Testing Laboratory. We are not familiar with it; it's not UL or Southwest. Could you fill us in on who ITL is and tell us what involvement they have in each test, in terms of planning, conduct and report writing and documentation base?

Mr. Feldman: Industrial Test Laboratories is a St. Louis-based laboratories. . . . We needed a third part (sic) *observing the various phases* of the testing. We have asked them if they would be willing to do that. They indicated that they would, so they *officiated during the phases of the testing*. That's how the reports were published.

Tr. at 167–8 (emphasis added). The discussion about ITL continued as follows:

Mr. West: . . . What I'm trying to find out is, I think we need to decide if their [ITL's] involvement in the test really would constitute the independence for the test.

Mr. Feldman: *They were very independent. They reviewed all the data. They analyzed all the data. It was as independent as you can make it.*

Tr. at 170 (emphasis added.)

Mr. Feldman's statements were inaccurate and misrepresented the respective roles of ITL and TSI in Thermo-Lag testing. Mr. Feldman knew that ITL did not function as an independent tester of Thermo-Lag, and that ITL's role was limited to having one of its representatives witness data acquisition on the date of the test, and verify furnace temperature readouts, without having any involvement in the construction or approval of the fire barrier/raceway test article.

Mr. Feldman's statements were material to the NRC because Mr. Feldman made them, on behalf of TSI: (1) in response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the nature of the relationship between TSI and ITL regarding the testing performed to qualify Thermo-Lag as 1-hour and 3-hour fire barrier material for use in nuclear power plants; (2) to influence the NRC's investigation into whether Thermo-Lag met NRC's fire protection requirements and guidelines; and (3) to persuade the NRC that, for those Thermo-Lag tests in which ITL had involvement, ITL had acted as an

independent, third-party reviewer and analyzer of all the test data. (02011).

This is a Severity Level I violation (Supplement VII) Civil Penalty—\$100,000

#### *Summary of TSI's Answer to Violation B*

In denying Violation B, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

#### *NRC Evaluation of TSI's Answer to Violation B*

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation B. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation B, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of \$100,000 should be imposed for Violation B.

#### *Restatement of Violation C*

C. Contrary to 10 CFR 50.5, TSI deliberately submitted inaccurate information material to the NRC on November 12, 1991, in response to NRC questions sent to TSI by letter dated October 31, 1991, as evidenced by the following examples:

1. The NRC asked TSI to "provide copies of all TSI correspondence and documents related to UL Project Report 86–NK–23826, File R–6–802, dated January 27, 1987" dealing with ampacity derating testing used to qualify Thermo-Lag as 1-hour and 3-hour rated fire barrier material. See NRC letter of October 31, 1991, Enclosure at 1, Question 7. In partial response, TSI submitted ITL Report 82–355–F–1 and ITL Report 84–10–5. See TSI's "Partial Response To The United States Nuclear Regulatory Commission's Letter Dated 31 October 1991" (attached to TSI's letter dated November 12, 1991), Answer 7–2 (2), at 9, and Attachment 4. This response was inaccurate in that TSI knew ITL Report 82–355–F–1

misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. This report's cover sheet carries the ITL logo, indicating that the report was written by ITL. This report is TSI Technical Note 111782, with an ITL cover sheet attached to it. TSI Technical Note 111782 had been written and issued by TSI in November 1981. ITL had no involvement in creating or issuing ITL Report 82–355–F–1, did not witness the subject ampacity test, and had no role in documenting or analyzing the test results.

2. Regarding ITL Report 84–10–5, TSI's November 12, 1991 response was further inaccurate in that TSI knew that this ITL Report also misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. The report's headings and titles indicate that the report was written by ITL. In fact, TSI wrote ITL Report 84–10–5, using ITL stationery that TSI had obtained from ITL. Section 2 of the report represents that ITL compared the test data to baseline data obtained in an October 1981 test (a reference to the test reported in ITL Report 82–355–F–1). In fact, no such data comparison was performed by ITL.

The inaccurate information TSI submitted to the NRC on November 12, 1991, in the form of the "ITL" reports, was material to the NRC because TSI's submittal was made: (1) in response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the ampacity derating testing used to qualify Thermo-Lag as 1-hour and 3-hour rated fire barrier material for use in nuclear power plants; and (2) to influence the NRC's investigation into whether Thermo-Lag met NRC's fire protection requirements. (03011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—\$100,000

#### *Summary of TSI's Answer to Violation C*

In denying Violation C, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

### *NRC Evaluation of TSI's Answer to Violation C*

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation C. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation C, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of \$100,000 should be imposed for Violation C.

### *Restatement of Violation D*

D. Contrary to 10 CFR 50.5, TSI deliberately submitted inaccurate information material to the NRC on December 3, 1991, in further response to NRC questions sent to TSI by letter dated October 31, 1991, as evidenced by the following examples:

1. The NRC asked TSI to "provide full copies of ITL fire test reports 82-11-80 and 82-11-81, including daily work sheets, quality assurance documentation, and thermocouple temperature records." NRC letter of October 31, 1991, Enclosure at 3, Question 19. This request was generated by Mr. Feldman's offer to provide the quality control records attached to ITL reports 82-11-80 and 82-11-81, which were needed to answer a question concerning test article construction. See October 17, 1991 transcript, at 89-90; 190-91. In response, TSI submitted complete copies of ITL Report 82-11-80 and ITL Report 82-11-81, which were the generic 1-hour and 3-hour test reports used to qualify Thermo-Lag as 1-hour and 3-hour fire barrier material for use in nuclear power plants. See TSI's "Supplemental Response To The Remaining Questions Contained In The United States Nuclear Regulatory Commission's Letter Dated 31 October 1991" (attached to TSI's letter dated December 3, 1991), Answer 19, at 9, and Enclosures 8 and 9. This response was inaccurate in that TSI knew ITL Report 82-11-80 misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. The Proprietary Rights statement of TSI, included as part of the report, stated that the report was prepared by ITL. In fact, the report was not prepared by ITL. TSI wrote ITL Report 82-11-80, using ITL stationery that TSI had obtained from ITL. Section 3 of ITL Report 82-11-80 states that the subject testing was performed "under

the supervision and total control of Industrial Testing Laboratories, of St. Louis, Missouri, an independent testing laboratory." In fact, the test was conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

2. Regarding ITL Report 82-11-81, TSI's December 3, 1991 response was further inaccurate in that TSI knew that this ITL Report also misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. The Proprietary Rights statement of TSI, included as part of the report, stated that the report was prepared by ITL. In fact, the report was not prepared by ITL. TSI wrote ITL Report 82-11-81, using ITL stationery that TSI had obtained from ITL. Section 3 of ITL Report 82-11-81 stated that the subject testing was performed "under the supervision and total control of Industrial Testing Laboratories, of St. Louis, Missouri, an independent testing laboratory." In fact, the test was conducted under the supervision and control of TSI, with ITL representative Donald Storment merely witnessing the tests and verifying furnace temperature readouts, which took place between September 10 and October 12, 1982. Moreover, several daily work sheet pages from Section 7 of the report are represented as having been signed by Mr. Storment. In fact, those pages contain replicated signatures of Mr. Storment, which TSI added to the report without the knowledge or consent of either ITL or Mr. Storment. For the daily work sheets that Mr. Storment did sign, TSI instructed Mr. Storment to backdate those sheets to make it appear that he had witnessed TSI work performed in August and early September of 1982, when, in fact, Mr. Storment had not witnessed that work.

The inaccurate information TSI submitted to the NRC on December 3, 1991 was material to the NRC because TSI's submittal was made: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific questions about the test articles discussed in ITL Reports 82-11-80 and 82-11-81, which were generic tests TSI had used to qualify Thermo-Lag as 1-hour and 3-hour rated fire barrier material for use in nuclear power plants; and (2) to influence the NRC's investigation into whether Thermo-Lag met NRC's fire protection requirements. (04011)

This is a Severity Level I violation (Supplement VII)  
Civil Penalty—\$100,000

### *Summary of TSI's Answer to Violation D*

In denying Violation D, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

### *NRC Evaluation of TSI's Answer to Violation D*

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation D. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation D, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of \$100,000 should be imposed for Violation D.

### *Restatement of Violation E*

E. Contrary to 10 CFR 50.5, TSI deliberately made a statement in a May 8, 1992 letter to the NRC which it knew contained inaccurate information material to the NRC. In this letter, TSI stated that its ongoing test program at Omega Point Laboratories was "under the total control of Omega Point." See TSI Letter of May 8, 1992, at 2. This statement was inaccurate in that this test program was not under the total control of Omega Point Laboratories. For example, the construction of the test articles and placement of the test thermocouples was under TSI's control.

This statement was material to the NRC because TSI submitted it: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the misleading nature of the "ITL" reports; and (2) to persuade the NRC that TSI was now subjecting Thermo-Lag to truly independent testing. (05011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—\$100,000

*Summary of TSI's Answer to Violation E*

In denying Violation E, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

*NRC Evaluation of TSI's Answer to Violation E*

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the allegations made in Violation E. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation E, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of \$100,000 should be imposed for Violation E.

*Restatement of Violation F*

F. Contrary to 10 CFR 50.5, TSI deliberately made statements in a June 16, 1992 letter to the NRC which it knew contained inaccurate information material to the NRC, including but not limited to the following examples:

1. TSI stated that its continuing test program at Omega Point Laboratories was "under the total control of Omega Point." See TSI Letter of June 16, 1992, at 2. This statement was inaccurate in that this test program was not under the total control of Omega Point. For example, the construction of the test articles and placement of the test thermocouples was under TSI's control.

2. TSI stated that the tests were being conducted in accordance with, among other criteria, the "applicable prerequisites of" NRC Generic Letter 86-10. See TSI Letter of June 16, 1992, at 3. This statement was inaccurate in that these tests were not being conducted in accordance with the guidance of NRC Generic Letter 86-10.

These statements were material to the NRC because TSI submitted them: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the misleading nature of the "ITL" reports; and (2) to persuade

the NRC that TSI was now subjecting Thermo-Lag to truly independent testing. (06011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—\$100,000

*Summary of TSI's Answer to Violation F*

In denying Violation F, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

*NRC Evaluation of TSI's Answer to Violation F*

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation F. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation F, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of \$100,000 should be imposed for Violation F.

*Restatement of Violation G*

G. Contrary to 10 CFR 50.5, TSI deliberately made a statement in a June 22, 1992 letter to the NRC which it knew contained inaccurate information material to the NRC. In this letter, TSI stated that the TSI-sponsored tests conducted at Omega Point Laboratories were "under their (Omega Point Laboratories) total control, which also included quality control during construction." See TSI Letter of June 22, 1992, at 2. This statement was inaccurate in that (1) TSI knew that the test program was not under the total control of Omega Point and that (2) TSI knew that quality control during construction of the test articles was not under the total control of Omega Point.

This statement was material to the NRC because TSI submitted it: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the misleading nature of the "ITL" reports; and (2) to persuade

the NRC that TSI was now subjecting Thermo-Lag to truly independent testing. (07011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—\$100,000

*Summary of TSI's Answer to Violation G*

In denying Violation G, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

*NRC Evaluation of TSI's Answer to Violation G*

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the allegations made in Violation G. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation G, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of \$100,000 should be imposed for Violation G.

*Restatement of Violation H*

H. Contrary to 10 CFR 50.5, TSI deliberately made a statement in a July 29, 1992 letter to the NRC which it knew contained inaccurate information material to the NRC. In this letter, TSI stated that the 1986 ampacity testing "was done by Underwriters Laboratories [sic] in Chicago under its [Underwriters Laboratory's] total control." TSI Letter of July 29, 1992, at 4. This statement was inaccurate in that TSI knew that the referenced ampacity testing was not under the total control of Underwriters Laboratory.

This statement was material to the NRC because TSI submitted it: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the ampacity derating testing used to qualify Thermo-Lag as 1-hour and 3-hour rated fire barrier material for use in nuclear power plants; and (2) to influence how the NRC disseminated information to the nuclear

industry about the performance of Thermo-Lag products. (08011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—\$100,000

#### *Summary of TSI's Answer to Violation H*

In denying Violation H, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

#### *NRC Evaluation of TSI's Answer to Violation H*

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the allegations made in Violation H. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation H, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of \$100,000 should be imposed for Violation H.

#### *Restatement of Violation I*

I. Contrary to 10 CFR 50.5, on or about August 31, 1992, TSI deliberately submitted to the NRC ITL Reports 85-6-283, 85-2-382, 85-5-314, 85-11-227, 86-7-472, 87-5-435, 87-6-350, 85-1-106, and 85-4-377. These reports misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. TSI knew these reports contained inaccurate information material to the NRC, as evidenced by the following examples:

1. Regarding ITL Report 85-6-283, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts. Page (i) of the

report represents that the ITL representative witnessing the test (Dave Siegel) was a professional engineer. However, subsequent NRC review has determined that Dave Siegel was not a professional engineer, did not have a college degree, and that TSI was aware of his lack of qualifications. Page (i) of the report also represents that Allan Siegel reviewed, approved, and signed the report on behalf of ITL. However, subsequent NRC review has determined that page (i) contains the replicated signature of Allan Siegel, which TSI added to the report without the knowledge or consent of Allan Siegel. Daily work sheets contained in Section 6 of the report were altered by TSI to make it appear that Dave Siegel witnessed TSI's construction of the test article on May 17, 1985, when in fact Dave Siegel only witnessed the test itself, which was performed on June 19, 1985. Similarly, in Section 7 of the report, TSI forged the initials of Dave Siegel on work sheets to make it appear that Dave Siegel was present on May 17, 1985, when TSI constructed the test article.

2. Regarding ITL Report 85-2-382, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

3. Regarding ITL Report 85-5-314, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts. Page (i) of the report represents that the ITL representative witnessing the test (Mike White) was a professional engineer. This is inaccurate in that Mr. White was not a professional engineer, and at that time TSI knew that Mr. White was not a professional engineer. Among the daily work sheets contained in Section 6 of the report are ones signed by Mike White, regarding test article work

performed by TSI on May 14, 1985. These work sheets are inaccurate in that Mr. White was present only during the test itself on May 21, 1985. In fact, TSI instructed Mr. White to backdate the work sheets he signed to make it appear that he had witnessed TSI May 14 work when, in fact, he had not witnessed that work.

4. Regarding ITL Report 85-11-227, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts. Among the daily work sheets contained in Section 6 of the report are ones signed by Mike White, regarding test article work performed by TSI on November 8, 1985. Section 6 is inaccurate in that Mr. White was present only during the test itself on November 19, 1985. In fact, Mr. White was instructed by TSI to sign work sheets to make it appear that he had witnessed TSI's November 8 work when, in fact, he had not witnessed that work.

5. Regarding ITL Report 86-7-472, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted on August 1, 1986 "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts. Contained within this report is a "Verification of Application" document dated July 31, 1986 and signed by R. A. Lohman on behalf of TSI. This document refers to ITL Test Article No. 86-7-472. This information was inaccurate in that there were never any ITL test articles, as ITL neither built nor helped to assemble any of the articles tested by TSI.

6. Regarding ITL Report 87-5-435, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject

testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

7. Regarding ITL Report 87-6-350, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

8. Regarding ITL Report 85-1-106, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

9. Regarding ITL Report 85-4-377, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Page (i) of the report represents that the ITL representative witnessing the test (Clarence Bester) was a professional engineer. This is inaccurate in that Mr. Bester was not a professional engineer. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

The reports TSI submitted to the NRC on or about August 31, 1992 were material to the NRC because they were submitted by TSI: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag products; (2) in the context of an ongoing NRC investigation into concerns about the quality and performance of Thermo-Lag products; and (3) to influence the NRC's

investigation into whether Thermo-Lag products met the fire barrier requirements of 10 CFR 50.48 and 10 CFR part 50, appendix R. (09011)

This is a Severity Level I violation (Supplement VII)

Civil Penalty—\$100,000

#### *Summary of TSI's Answer to Violation I*

In denying Violation I, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

#### *NRC Evaluation of TSI's Answer to Violation I*

TSI's brief pro forma answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation I. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation I, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of \$100,000 should be imposed for Violation I.

#### *NRC Conclusion*

The NRC has concluded that the violations alleged in the Notice occurred as stated. TSI did not provide any basis for reducing the severity level of the violations, and did not provide any basis for mitigation of the proposed civil penalties. Consequently, the proposed civil penalty in the amount of \$900,000 should be imposed on TSI.

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### **NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-482]

#### **Wolf Creek Nuclear Operating Corporation (Wolf Creek Generating Station); Exemption**

##### **I**

Wolf Creek Nuclear Operating Corporation (WCNOC or licensee) is the

holder of Facility Operating License No. NPF-42, which authorizes operation of the Wolf Creek Generating Station (WCGS). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Coffey County, Kansas.

##### **II**

Section 50.60(a) to 10 CFR part 50 requires that except as provided in § 50.60(b), all light-water nuclear power reactors, other than reactor facilities for which the certifications required under section 50.82(a)(1) have been submitted, must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in appendices G and H of 10 CFR part 50. Section 50.60(b) of 10 CFR part 50 states that proposed alternatives to the described requirements of appendices G and H of part 50 or portions thereof may be used when an exemption is granted by the Commission under 10 CFR 50.12.

##### **III**

By letter dated December 29, 1998, WCNOG requested that the NRC exempt WCGS from the application of specific requirements of 10 CFR 50.60 and appendix G to 10 CFR Part 50. Specifically, WCNOG proposes to use American Society for Mechanical Engineers (ASME) Code Case N-514 to permit setting the pressure setpoint of WCGS's cold overpressure mitigation system (COMS) such that the pressure-temperature (P-T) limits required by appendix G of 10 CFR part 50 could be exceeded by ten percent during a low temperature pressure transient.

The Commission has established requirements in 10 CFR part 50 to protect the integrity of the reactor coolant system pressure boundary. As a part of these, appendix G of 10 CFR part 50 requires that P-T limits be established for reactor pressure vessels (RPVs) during normal operation and vessel hydrostatic testing. As stated in appendix G, "The appropriate requirements on . . . the pressure-temperature limits . . . must be met for all conditions." In order to avoid approaching these P-T limit curves and provide pressure relief during low temperature overpressurization events, pressurized water reactor licensees have installed protection systems (COMS) as part of the reactor coolant system pressure boundary. WCNOG is required as part of the WCGS Technical Specifications (TS) to develop, update,