

## NUCLEAR REGULATORY COMMISSION

[Docket No. 040-02384-CivP, ASLBP No. 02-797-01-CivP, EA 99-290]

**Atomic Safety and Licensing Board; Before Administrative Judges: Charles Bechhoefer, Chairman, G. Paul Bollwerk, III, Dr. Richard F. Cole; In the Matter of Earthline Technologies (Previously RMI Environmental Services), Ashtabula, OH, License No. SMB-00602; Order Imposing Civil Monetary Penalty**

March 26, 2002.

### Notice of Hearing

This proceeding involves a proposed civil penalty of \$17,600 sought to be imposed by the NRC Staff on Earthline Technologies, previously RMI Environmental Services, Ashtabula, OH (Earthline or Licensee) for an alleged violation of NRC's employee protection regulations, based upon the asserted discrimination by an Earthline management official against an employee for engaging in protected activities (i.e., contacting the NRC concerning safety matters. In response to an Order Imposing Civil Monetary Penalty, dated January 15, 2002 and published at 67 FR 3917 (Jan. 28, 2002), Earthline on February 6, 2002 filed a timely request for an enforcement hearing. On March 6, 2002, an Atomic Safety and Licensing Board, consisting of G. Paul Bollwerk, III, Dr. Richard F. Cole, and Charles Bechhoefer, who serves as Chairman, was established to preside over this proceeding. 67 FR 11,147 (March 12, 2002).

Notice is hereby given that, by Memorandum and Order dated March 26, 2002, the Atomic Safety and Licensing Board has granted the request for a hearing submitted by Earthline. This proceeding will be conducted under the Commission's hearing procedures set forth in 10 CFR part 2, subparts B and G. Parties to this proceeding are Earthline and the NRC Staff. The issues to be considered, as set forth in the Order Imposing Civil Monetary Penalty, are (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, served on the Licensee by letter dated September 24, 2001; and (b) whether, on the basis of such violation, the Order Imposing Civil Monetary Penalty should be sustained.

Documents related to this proceeding issued prior to December 1, 1999, are available in microfiche form (with print form available on one-day recall) for

public inspection at the Commission's Public Document Room (PDR), Room O-1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738. Documents issued subsequent to November 1, 1999, are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <<http://www.nrc.gov/NRC/ADAMS/index.html>>). The PDR and many public libraries have terminals for public access to the Internet.

As set forth at 10 CFR 2.205(g) and 2.203, the Commission urges the parties in proceedings such as this one to attempt to settle or compromise the matters at issue. Except to the extent an early settlement or other circumstance renders them unnecessary, the Licensing Board may, during the course of this proceeding, conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Licensing Board Orders. Except as limited by the parameters of telephone conferences (which are in any event to be transcribed), members of the public are invited to attend such sessions.

For the Atomic Safety and Licensing Board.

Dated in Rockville, Maryland, on March 26, 2002.

**Charles Bechhoefer,**

*Chairman, Administrative Judge.*

[FR Doc. 02-7796 Filed 3-29-02; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-260 and 50-296]

**Tennessee Valley Authority; Browns Ferry Plant, Units 2 and 3; Exemption**

### 1.0 Background

The Tennessee Valley Authority (TVA, the licensee) is the holder of Facility Operating License Nos. DPR-52 and DPR-68 which authorize operation of the Browns Ferry Plant, Units 2 and 3 (BFN 2 and 3), respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a three boiling-water reactors located in Limestone County in the State of Alabama.

### 2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, requires that pressure-temperature (P-T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, appendix G to 10 CFR part 50 states that "[t]he appropriate requirements on . . . the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Further, appendix G of 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Code. In this exemption, consistent with the current provisions of 10 CFR 50.55(a), all references are to the ASME Code denote the 1995 Edition of the ASME Code, including the 1996 Addenda.

In order to address the provisions of amendments to the BFN 2 and 3 Technical Specifications (TS) P-T limit curves, TVA requested in its submittal dated August 17, 2001, as supplemented December 14, 2001, and February 6, 2002, that the staff exempt the BFN 2 and 3 from the application of the specific requirements of appendix G to 10 CFR part 50, and substitute use of ASME Code Case N-640. ASME Code Case N-640 permits the use of an alternate reference fracture toughness curve for RPV materials for use in determining the P-T limits. The proposed exemption request is consistent with, and is needed to support, the BFN 2 and 3 TS amendments that were contained in the same submittals. The proposed BFN 2 and 3 TS amendments will establish revised P-T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 17.2 effective full-power years (EFPY) of operation for BFN 2 and through 13.1 EFPY of operation for BFN 3.

#### *ASME Code Case N-640*

The licensee has proposed an exemption to allow the use of ASME Code Case N-640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR part 50, appendix G, to establish P-T limits for the BFN 2 and 3 RPVs.

The proposed TS amendments to revise the P-T limits for BFN 2 and 3 rely in part on the requested exemption and the application of ASME Code Case N-640. These revised P-T limits have been developed using the lower bound  $K_{IC}$  fracture toughness curve shown in ASME Section XI, Appendix A, Figure

A-2200-1, in lieu of the lower bound  $K_{IA}$  fracture toughness curve of ASME Section XI, Appendix G, Figure G-2210-1, as the basis fracture toughness curve for defining the BFN 2 and 3 P-T limits.

Use of the  $K_{IC}$  curve as the basis fracture toughness curve for the development of P-T operating limits is more technically correct than the use of the  $K_{IA}$  curve. The  $K_{IC}$  curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of an RPV, whereas the  $K_{IA}$  fracture toughness curve codified into Appendix G to Section XI of the ASME Code was developed from the more conservative crack arrest and dynamic fracture toughness test data. The application of the  $K_{IA}$  fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the  $K_{IA}$  fracture toughness curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, the P-T limit curves based on the  $K_{IC}$  fracture toughness curve will enhance overall plant safety by minimizing challenges to operators since requirements for maintaining a high vessel temperature during pressure testing would be lessened. Personnel safety would also be enhanced because of the corresponding lower temperatures which would exist inside containment as leakage walkdown inspections are conducted.

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff has determined that this increased knowledge permits relaxation of the ASME Section XI, Appendix G, requirements by application of ASME Code Case N-640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the NRC regulations to ensure an acceptable margin of safety.

The NRC staff has reviewed the exemption request submitted by TVA and has concluded that the application

of the technical provisions of the ASME Code Case N-640 provides sufficient margin in the development of RPV P-T limit curves for BFN 2 and 3 such that the underlying purpose of the NRC regulations continues to be met to ensure an acceptable margin of safety.

### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

The staff has determined that an exemption would be required to approve the use of Code Case N-640. The staff examined the licensee's rationale to support the exemption request and concurred that the use of the Code Case would meet the underlying purpose of the regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, appendix G, appendix G of the Code, and Regulatory Guide 1.99, Revision 2, the staff concludes that application of the Code Case as described would provide an adequate margin of safety against brittle failure of the RPV. This conclusion is also consistent with the determinations that the staff has reached for other licensees under similar conditions based on the same considerations.

The staff has examined the licensee's rationale to support the exemption request and concludes that the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N-640 may be used to revise the P-T limits for the BFN 2 and 3 RPVs such that the underlying purpose of 10 CFR part 50, appendix G, continues to be met to ensure an acceptable margin of safety.

### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the Tennessee Valley Authority an exemption from the requirements of 10 CFR 50, appendix G, for Browns Ferry Plant, Units 2 and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 11721).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of March, 2002.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02-7797 Filed 3-29-02; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 134th meeting on April 16-18, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T-2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

#### Tuesday, April 16, 2002

**A. 12:30—12:40 P.M.: Opening Statement (Open)**—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

**B. 12:40—3:30 P.M.: High-Level Waste Risk Insights Initiative (Open)**—The Committee will hear a presentation by the NRC staff on the preliminary results of its risk insights initiative.

**C. 3:45—4:45 P.M.: Amendment to 10 CFR part 63 (Open)**—The NRC staff will provide a briefing on its final rulemaking amendment to Part 63 on the probability for "Unlikely Events" at the proposed Yucca Mountain high-level waste repository site.

**D. 4:45—6:00 P.M.: Preparation of ACNW Reports (Open)**—The Committee will discuss proposed reports on the following topics.

- High-Level Waste Risk Insights Initiative
- Amendment to 10 CFR part 63 "Unlikely Events"—Final Rule
- Update on Igneous Activity including Performance Assessment Analyses
- HLW Performance Assessment Sensitivity Studies

#### Wednesday, April 17, 2002

**E. 8:30—8:35 A.M.: Opening Remarks by the ACNW Chairman (Open)**—The