

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History Workshops, submitted to the Division of Education Programs at the August 6, 2004 deadline.

5. *Date:* September 24, 2004.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Native American History and Culture, submitted to the Division of Preservation and Access at the July 15, 2004 deadline.

6. *Date:* September 28, 2004.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Linguistics, submitted to the Division of Preservation and Access at the July 15, 2004 deadline.

Daniel Schneider,

Advisory Committee Management Officer.

[FR Doc. 04-20265 Filed 9-7-04; 8:45 am]

BILLING CODE 7536-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, September 14, 2004.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is Open to the public.

MATTER TO BE CONSIDERED:

5299N Most Wanted Safety Recommendations Program—2004 Update on State Issues.

News Media Contact: Telephone: (202) 314-6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314-6305 by Friday, September 10, 2004.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at www.nts.gov.

FOR FURTHER INFORMATION CONTACT:

Vicky D'Onofrio, (202) 314-6410.

Dated: September 3, 2004.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 04-20393 Filed 9-3-04; 10:56 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030-36567, 030-34261; License Nos. 27-23914-01E, 42-23850-02E, EA-03-187]

In the Matter of 21st Century Technologies, Inc., Las Vegas, NV; Order Imposing Civil Monetary Penalty

21st Century Technologies, Inc. (Licensee) is the holder of Exempt Distribution License No. 27-23914-01E, issued by the Nuclear Regulatory Commission (NRC or Commission) on May 19, 2004.¹ The license authorizes the Licensee to distribute products containing byproduct material (*i.e.*, tritium) in accordance with the conditions specified therein.

An inspection and investigation of the Licensee's activities were completed in October 2003. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (notice) was issued to the Licensee by letter dated April 13, 2004. The notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation (\$6,000).

The Licensee responded to the notice in a letter dated May 11, 2004. In its response, the Licensee admitted the violations, provided qualifying information with respect to several of the examples, contested the classification of the violations as a Severity Level III problem, contested the NRC's application of its civil penalty assessment process, and requested remission or mitigation of the proposed civil penalty. The licensee's letter also described 21st Century's plans to correct and prevent recurrence of the violations.

After consideration of the Licensee's response, and for the reasons discussed in the Appendix to this Order, the NRC concludes that the severity level of the violations was appropriately determined, that the civil penalty assessment process was correctly followed, and that the licensee has not provided a basis for reducing the severity level of the violations or for mitigating the proposed civil penalty. Therefore, the NRC concludes that the civil penalty proposed for the violations designated in the notice should be imposed by Order.

¹ Prior to May 19, 2004, the company held License No. 42-23850-02E, Docket No. 030-34261, and was based in Haltom City, Texas.

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:*

The Licensee pay a civil penalty in the amount of \$6,000 within 30 days of the date of this Order, in accordance with the payment methods described in NUREG/BR-0254. In addition, at the time of making the payment, the licensee 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.

The Licensee 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee 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 Attorney General for collection.

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

Whether on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated this 30th day of August 2004.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

Appendix To Order Imposing Civil Monetary Penalty—EA-03-187 Evaluation and Conclusion

On April 13, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty (notice) was issued to the Licensee for violations identified during an NRC inspection and investigation. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations (\$6,000).

The Licensee responded to the notice in a letter dated May 11, 2004. In its response, the Licensee admitted the violations that resulted in the civil penalty, provided qualifying information with respect to several of the examples, contested the classification of the violations as a Severity Level III problem, contested the NRC's application of its civil penalty assessment process, and requested remission or mitigation of the proposed civil penalty.

The NRC's evaluation of the licensee's response, and conclusions regarding the licensee's requests are as follows:

Summary of Licensee's Response & Request for Remission or Mitigation of the Penalty

1. Severity Level III should not be assigned to actions where there is no clear knowledge on a licensee's part that the actions taken are in violation of the license and the licensee has a rational basis for conducting licensing activities, even though those activities turn out to be outside the scope of the license. Licensee contends that five of the seven examples included in the violations assessed a civil penalty are due to misinterpretation and misunderstanding of the license provisions, and states that reasonable minds can differ on these issues notwithstanding the fact that the NRC has the final word.

2. The licensee takes exception to NRC's statement that "The number of examples of these violations, and the extended time period over which they occurred, represent a programmatic concern with the potential to impact radiological safety." The licensee cites a reference in NRC's Enforcement Policy to not citing licensees for failing to report events the licensee is unaware of, and draws a parallel here by stating "A licensee should not be cited for a programmatic failure unless the licensee was actually aware that it was not following the licensing program or if licensee believed in good faith that it was following the licensing program."

3. The licensee understands the NRC staff to have previously agreed that none of the license infractions impacted or potentially impacted public health and safety. This

appears to be inconsistent with the letter of April 13 where it expressed "a programmatic concern with the potential to impact radiological safety."

4. The licensee acknowledges that two examples of the violations assessed a civil penalty were not the result of misinterpretation and misunderstanding of license provisions, but argues that these do not support a finding of a programmatic failure because they are too few in number and because they may have been the result of employee sabotage.

5. The NRC should not have considered "Identification" credit in the civil penalty assessment process because the standard of considering previous escalated enforcement during the past 2 years or past 2 inspections, whichever is longer, is directed toward nuclear power plant inspections or inspections that occur on an annual or near annual basis, and not to situations involving inspections that occur every 5 years.

6. Although the NRC identified the violations in this case, credit for identification should be given to the licensee because, under the circumstances, the licensee's actions related to identification were not unreasonable.

7. Licensee should be given credit for prompt and comprehensive action because it took immediate actions necessary upon discovery of each violation to assure compliance with the license, and, in a timely manner, developed and is implementing the lasting actions designed to prevent recurrence of the violations at issue, actions that are appropriately comprehensive to prevent occurrence of violations with similar root causes.

8. The licensee states that special circumstances exist that warrant the exercise of discretion to reduce the severity level of the violations. These include the significance of the violations, the clarity of the requirement, the overall sustained performance of the licensee, and other relevant circumstances. The licensee repeats many of its previous arguments, including its assertion that it was operating in good faith relative to compliance with the license, and that it has taken extensive corrective action to assure long-term compliance. The licensee states, "Licensee believes that there is a sufficient laxe (sic) of clarity about the license requirements to justify a reduction of the assignment of Severity Level III to Level IV and elimination of the fine for civil penalty."

NRC Evaluation of Licensee's Responses & Request for Remission or Mitigation of Penalty

1. The licensee is essentially saying that Severity Level III should not be assigned where the licensee did not know it was violating NRC requirements. If the NRC had been able to show the licensee knew it was violating NRC requirements, and continued to do so, the NRC could have characterized the violations as willful non-compliances, and could have considered assigning a higher severity level to the violations, in accordance with Section IV.A.4 of the Enforcement Policy. The specific severity level example that NRC relied upon (Enforcement Policy,

Supplement VI, C.8) does not reference willfulness and supports a Severity Level III determination without regard to willfulness. In addition, in determining severity level, the NRC also considered the fact that the violations impacted the ability of the NRC to perform its regulatory function, in accordance with Section IV.A.5 of the Enforcement Policy.

The alleged "lack of clarity" in the license does not justify a reduction in the assigned Severity Level III. The NRC staff does not agree that reasonable minds would differ as to the meaning of License Condition 10. The licensee asserted that it relied on Attachment 16 to the license as authorizing distribution of several products which the NRC found in this action to have been distributed in violation of the license. License Condition 10 authorized certain types of products and explicitly referred to specified attachments for details regarding the authorized products. The license, however, nowhere referenced Attachment 16 with respect to any authorized product. License Condition 10 was crafted and submitted by 21st Century as a license amendment after discussions between the former 21st Century President and NRC staff. The former President of 21st Century stated at the predecisional enforcement conference that he had misunderstood the license and that he was "guilty of probably not being real smart in reading licenses". 21st Century had every opportunity to seek clarification from the NRC as to what the license allowed prior to modifying its products and distributing them. Moreover, 21st Century was the subject of prior escalated enforcement in 1996, and as a result was well aware that only those products explicitly authorized by the license could be distributed by the company. The appropriate response to any perceived lack of clarity in the license was for the licensee to obtain clarification. Instead, the licensee failed to have systems in place to assure compliance with the license, and failed to seek any necessary clarification prior to modifying its products and distributing them.

2. The licensee is responsible for assuring that it is complying with the conditions of the license. In addition, a programmatic concern does not rest on whether the licensee was aware it was operating in noncompliance. As discussed in item 1 above, if the NRC had been able to show that the licensee was aware it was operating in noncompliance, the violations could have been characterized as willful non-compliances, and the NRC could have considered assigning a higher severity level. Adopting the licensee's views would encourage licensees to remain ignorant of NRC requirements.

3. NRC has acknowledged that the violations did not result in any actual safety consequences. NRC has not stated, however, that there were no potential safety consequences. As we stated at the predecisional enforcement conference, the NRC has a responsibility to assure that licensees who distribute radioactive material to members of the public, do so in a manner which provides reasonable confidence that the products are safe. NRC reviews the engineering designs and safety features of

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

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

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

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

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

8. There is no basis to grant 21st Century's request for mitigation and a reduction in the severity level of the violations, due to the claimed "special circumstances" of significance of the violations, lack of clarity

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

NRC Conclusion

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

[FR Doc. 04-20299 Filed 9-7-04; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499]

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

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

The proposed amendment would have revised the Technical

Specifications to extend the steam generator inspection interval.

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

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

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

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

For the Nuclear Regulatory Commission.

David H. Jaffe,

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

[FR Doc. 04-20301 Filed 9-7-04; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-02]

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

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

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