

50.12(a)(1), the licensee stated that the requested action is authorized by law in that no prohibition of law exists which would preclude the activities which would be authorized by the exemption. In addition, the licensee stated that, for the reasons discussed above, the requested exemption does not present an undue risk to the public health and safety. Finally, the licensee stated that containment leak rate testing is not considered in the common defense and security of the nation.

With respect to the requirements of 10 CFR 50.12(a)(2)(iii), the licensee stated that special circumstances are present because compliance with the strict requirements of Appendix J would result in hardships significantly in excess of those contemplated when the regulation was adopted. The licensee stated that at the time the regulation was adopted, a presumption was made that a 2-year test interval would easily accommodate performance of the required tests during an operating cycle. However, development of new core designs have resulted in cycles of 24 months, or longer. Performance of the tests at the 24-month frequency would result in undue financial hardship resulting from extended reactor shutdown beyond that intended by the regulation with little or no compensatory increase in the level of safety or quality.

V

Based on the above, the staff finds there is reasonable assurance that the containment leakage-limiting function will be maintained and that a forced outage to perform Type B and C tests is not necessary. Therefore, the staff finds the requested exemption, to allow the Type B and C test intervals for the penetrations listed in the licensee's February 22, 1995 request to be extended for 60 days from their current expiration date, to be acceptable. The exemption request has been evaluated in a safety evaluation dated April 25, 1995.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested 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. The Commission finds that the special circumstances as required by 10 CFR 50.12(a)(2) are present. The Commission's finding is based on the information provided by the licensee regarding 10 CFR 50.12(a)(2)(iii). In addition, as specified in 50.12(a)(2)(ii), special circumstances are present whenever the application of the

regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to ensure that the components comprising the primary containment boundary are maintained and leak tested at periodic and appropriate intervals. The 24-month maximum interval was originally expected to bound the typical operating cycle, including a limited amount of mid-cycle outage time. The advent of advanced fuel types has made it possible to operate the facility for the 24 months with minimal, if any mid-cycle outage time. Strict adherence to the 24-month maximum interval is not necessary to meet the underlying purpose of the rule in that, taking into consideration the 60-day extension, the components that comprise the primary containment boundary will still be tested at a frequency that is appropriate to those components and their application. In addition, the 60-day extension represents a minimal increase in the existing 24-month interval required by the rule. Therefore, the staff finds the requested temporary exemption, to allow the Type B and C test intervals for penetrations described in the licensee's February 22, 1995 letter, to be extended for 60 days, to be acceptable.

An exemption is hereby granted from the requirements of Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50, which requires that Type B and C tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years, for a period of 60 days from the expiration of the current leak test for the affected penetrations.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 19968).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 25th day of April 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

*Director, Division of Reactor Projects—I/II,
Office of Nuclear Reactor Regulation.*

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[Docket No. 030-32493; License No. 29-28685-01; EA 93-072]

Radiation Oncology Center at Marlton, Marlton, New Jersey; Order Imposing a Civil Monetary Penalty

I

Radiation Oncology Center at Marlton (Licensee) is the holder of Byproduct Materials License No. 29-28685-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on January 17, 1992. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein. The License is due to expire on January 31, 1997. By a Confirmatory Action Letter dated February 5, 1993, the Licensee agreed to not obtain any sources of radioactive material authorized under the License until specifically authorized by NRC Region I. By a Confirmatory Order Modifying License (Effective Immediately) dated March 9, 1993, the Licensee was required to maintain any NRC-licensed material in a locked, stored, and shielded condition, and was prohibited from receiving any NRC-licensed material.

II

An NRC inspection of the Licensee's activities was conducted on February 2 and 4, 1993. The results of this inspection indicated that the Licensee has not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 31, 1994. The Notice states the nature of the violation, the provisions of the NRC requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in letters dated August 31, 1994, October 4, 1994, and December 1, 1994. In its responses the Licensee denies Examples A.3, A.4, B.1, B.2, D., and G. of the violations, denies in part and admits in part Examples A.1, A.2, and C. of the violation, and admits Examples A.5, E., and F. of the violation. The Licensee also protests the amount of the civil penalty proposed and requests mitigation of the penalty as appropriate.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that, with the