



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

May 1, 2006

EA-06-021

Ms. Marcina Wilkinson, President
H&G Inspection Company, Inc.
9315 Summerbell Lane
Houston, Texas 77074

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$6,500 (NRC INSPECTION REPORT 030-29319/04-003 AND OI
INVESTIGATION REPORT NO. 4-2005-003)

Dear Ms. Wilkinson:

This refers to the predecisional enforcement conference conducted on April 13, 2006, in the Region IV offices in Arlington, Texas. The conference was conducted to review the circumstances surrounding apparent violations of NRC requirements that were identified after an inspection and subsequent investigation by the NRC's Office of Investigations. The inspection was an examination of activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations at a temporary jobsite in Rock Springs, Wyoming, and at the H&G field office located in Evanston, Wyoming. Our findings were discussed with you during a March 10, 2006, telephonic exit briefing, and were documented in the subject inspection report dated March 27, 2006.

During the April 13 conference, your company did not dispute any of the violations, but did disagree that willfulness was involved. We also discussed your concern with the time between NRC's identification of the violations and NRC's communication of the inspection findings to your corporate office. We pointed out that an investigation was ongoing and we had debriefed your area supervisor in Wyoming immediately following the jobsite inspection. We have reviewed our internal practices of communicating with corporate officials in situations where investigations are ongoing and have incorporated lessons-learned from this situation. Your corporate radiation safety officer (RSO) pointed out that once he became aware of the problems he conducted an internal review and appropriate corrective actions were taken. The corrective actions discussed during the conference included: (1) replacing the area supervisor in the Evanston field office; (2) replacing other personnel in that field office; (3) holding companywide safety meetings about the deficiencies that NRC found; (4) completing implementation of a new locking system (using two physical systems); (5) conducting additional field audits; (6) conducting retraining for affected individuals; and (7) clarifying Operation and Emergency procedures regarding the requirements for the 2-person rule.

Based on the information developed during the inspection, investigation, and conference, the NRC has determined that three violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations involved failures to: (A) control and maintain constant surveillance of licensed material in an unrestricted area (10 CFR 20.1802); (B) have a second qualified individual observe radiographic operations

(10 CFR 34.41(a)), and (C) block and brace a radiographic exposure device during transport (10 CFR 71.5(a) and 49 CFR 177.842). Your corporate RSO disagreed that willfulness was involved with Violation C because he thought the individuals were probably in a hurry rather than making a conscious decision to violate requirements. However, the NRC noted that (1) the NRC inspector had reminded the radiographer and the assistant (during the inspection) that blocking and bracing the radiographic exposure device was required prior to transport; (2) the radiographer assured the inspector they would block and brace the device before leaving the jobsite that night, and (3) when asked why they had not met this requirement the radiographer stated that the equipment was not available, when in fact equipment was available. Given the totality of the circumstances, the NRC has determined that willfulness is associated with Violation C.

The NRC acknowledges that there were no actual safety consequences as a result of these violations. Violations A and B, however, involving the failure to maintain security of a radiographic exposure device and the failure to have a second qualified individual observe radiographic operations, each had the potential to impact the safe use of radioactive materials. Each of these violations is an example of a Severity Level III violation in NRC's Enforcement Policy (see Supplement IV, example C.11.a., and Supplement VI, example C.6). Violation C is normally classified at Severity Level IV. However it is more significant because willfulness was involved. Therefore, in accordance with the NRC's Enforcement Policy, Violations A, B, and C are categorized individually as Severity Level III violations. The current Enforcement Policy is included on the NRC's web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$6,500 is considered for each Severity Level III violation (i.e., for Violations A, B and C). In accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy, the civil penalty assessment process is the same for Violations A and B because willfulness was not involved and because there has not been escalated enforcement in the past 2 years. In considering a civil penalty for these two violations, the NRC evaluated whether credit was warranted for *Corrective Action*. Based on the corrective actions discussed during the April 13 conference (described above), the NRC has determined that once the corporate RSO became aware of the issues, the licensee did take comprehensive corrective actions. Because credit is warranted for *Corrective Action*, no civil penalty is warranted for either of these two violations.

However, the civil penalty assessment process for Violation C is different because of willfulness. The NRC considered whether the licensee is deserving of both *Identification* and *Corrective Action* credit. Since this violation was identified by an NRC inspector, H&G Inspection is not deserving of identification credit. However, based on corrective actions discussed during the April 13 conference (described above), the NRC has determined that corrective action credit is warranted. In accordance with the NRC civil penalty assessment process, denying identification credit and granting corrective action credit results in a base civil penalty for this Severity Level III violation.

Therefore, to emphasize the importance of preventing willful violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the base amount of \$6,500 for the Severity Level III violation. In addition, issuance of the Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

You may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflict outside of

court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning this pilot program can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Bruce S. Mallett
Regional Administrator

Docket No.: 030-29319
License No.: 42-26838-01

Enclosures:

1. Notice of Violation
2. NUREG/BR 0254

cc w/Enclosure 1:
Texas Radiation Control Program Director
Wyoming Radiation Control Program Director

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

H&G Inspection Company, Inc.
Houston, Texas

Docket No. 030-29319
EA-06-021

During an NRC inspection and investigation conducted from December 15, 2004 to March 10, 2006, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C.2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

A. Violation Assessed a Civil Penalty

10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 107, 171 through 180, and 390 through 397.

49 CFR 177.842(d) requires, in part, that packages of radioactive materials be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on December 15, 2004, the licensee transported a package containing licensed material outside the site of usage, as specified on the NRC license, and on a public highway, and the package was not blocked and braced such that it could not change position during conditions normally incident to transportation. Specifically, a radiographic exposure device containing licensed material was transported to and from a temporary jobsite without the required blocking and bracing.

This is a Severity Level III violation (Supplement V).
Civil Penalty - \$6,500

B. Violations Not Assessed a Civil Penalty

1. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on December 15, 2004, the licensee did not secure from unauthorized removal or limit access to a radiographic exposure device containing approximately 54 curies of Iridium-192 located in the licensee's

ENCLOSURE 1

mobile darkroom, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. Specifically, on December 15, 2004, the licensee stored its radiography camera in the mobile darkroom of its truck parked at the licensee's facility in Evanston, Wyoming, and the door to the darkroom was left unsecured and the licensee did not otherwise control and maintain constant surveillance of the licensed material.

This is a Severity level III violation (Supplement IV).

2. 10 CFR 34.41(a) requires that whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements of 10 CFR 34.43(c). The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

Contrary to the above, on December 15, 2004, the licensee performed radiographic operations at a location other than a permanent radiographic installation, and the additional qualified individual did not observe operations and was not capable of providing immediate assistance to prevent unauthorized entry. Specifically, although the licensee had two qualified individuals present at a temporary jobsite in Rock Springs, Wyoming where radiographic operations were being performed, the second qualified individual (radiographer's assistant) was physically located in the licensee's mobile darkroom during radiographic operations, and was therefore not able to observe the operations or provide immediate assistance to prevent unauthorized entry.

This is a Severity level III violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, H&G Inspection Company, Inc., is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as "Reply to a Notice of Violation - EA-06-021" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted and, if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended or revoked, or as to why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

ENCLOSURE 1

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty, in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234(c) of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Michael R. Johnson, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in

detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you are required to post this Notice within two working days.

Dated this 1st day of May 2006.

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