



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
REGION I  
475 ALLENDALE ROAD  
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

February 19, 1997

EA 97-065

Mr. Warren L. Stevens, President  
M&W Soils Engineering, Inc.  
265 Main Street  
Post Office Box 884  
Charlestown, New Hampshire 03603

**SUBJECT: NOTICE OF VIOLATION**  
**(NRC Inspection Report No. 9999-0001/97-008)**

Dear Mr. Stevens:

This letter refers to the NRC inspection conducted on January 30, 1997, at the above mentioned facility, of activities authorized by NRC general license granted to you pursuant to 10 CFR 150.20(a). During the inspection, an apparent violation of NRC requirements was identified. The violation involved performance of licensed activities in Vermont from approximately January 1, 1994, until December 12, 1996, without first filing the appropriate reciprocity forms with the NRC so as to provide notification that gauges possessed under your New Hampshire license would be used in Vermont, and, therefore, subject to NRC jurisdiction. A copy of the NRC inspection report is enclosed. In a telephone conversation between yourself and Ms. J. Johansen of my staff on February 11, 1997, you declined the offer to participate in a predecisional enforcement conference concerning the apparent violation and discussed your corrective actions to prevent recurrence of the problem.

The violation involving the failure to adhere to the reciprocity requirements is of significant concern to the NRC because the gauges were used at twelve sites in Vermont, including the Vermont Yankee Nuclear Power Station, without the NRC being aware of their use. Notification of the NRC is particularly important since the NRC, rather than the State of New Hampshire, regulates the use of the gauges in the State of Vermont. You indicated that in 1994 when licensee ownership changed through an amendment, no information on reciprocity was provided to you by the State of New Hampshire. Nonetheless, it is the responsibility of licensee management to be knowledgeable of the applicable regulations and to assure that these regulations are met. In view of the above, the failure to adhere to reciprocity requirements is classified as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) NUREG-1600 and is set forth in the enclosed Notice of Violation (Notice). A copy of the Enforcement Policy is also enclosed.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last two years, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process

in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were both prompt and comprehensive. These actions included: (1) stopping all work in Vermont as soon as you were notified of the reciprocity requirements; and (2) requesting and obtaining information from the NRC regarding the filing for reciprocity.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information, so that it can be placed in the PDR without redaction.

The response directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,



Hubert J. Miller  
Regional Administrator

Docket No. 9999-0001  
New Hampshire License No. 264R

Enclosures:

1. Notice of Violation
2. NRC Inspection Report No. 9999-0001/97-008
3. NUREG-1600 (Enforcement Policy)

cc w/encls:  
State of New Hampshire  
State of Vermont

ENCLOSURE 1

NOTICE OF VIOLATION

M & W Soils Engineering, Inc.  
Charlestown, New Hampshire 03063

Docket No. 9999-0001  
New Hampshire License No. 264R  
EA No. 97-065

During an NRC inspection conducted on January 30, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violation is listed below:

10 CFR 150.20(b)(1) requires that, when engaging in activities in non-Agreement States under the general license granted by 10 CFR 150.20(a), four copies of Form-241 (revised) and four copies of the Agreement State specific license be filed with the Regional Administrator of the U.S. Nuclear Regulatory Commission Office (for the region in which the Agreement State that issued the license is located) at least three days prior to engaging in such activity.

Contrary to the above, from approximately January 1, 1994, to December 12, 1996, the New Hampshire licensee used three portable nuclear density gauges containing approximately 9 millicuries of Cesium-137 and 44 millicuries of Americium-241 per gauging device at approximately 12 sites in the State of Vermont, a non-Agreement State, without the proper forms (i.e., NRC Form 241 and Agreement State license) having been filed with the NRC Region I Regional Administrator.

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

Pursuant to the provisions of 10 CFR 2.201, M & W Soils Engineering, Inc. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) 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 why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

**Dated at King of Prussia, Pennsylvania  
this 19th day of February 1997**