Template RGN-002

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931

February 8, 2000

IA 99-050

Mr. Leonard Frye
[HOME ADDRESS DELETED
PURSUANT TO10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION (OFFICE OF INVESTIGATIONS REPORT NO. 2-1998-018)

Dear Mr. Frye:

This refers to the investigation of Allegheny Wireline Services, Inc. (AWS), initiated August 13, 1998, and the inspection conducted at the AWS Elderton, Pennsylvania, facility on July 15, 1998. The purpose of the Office of Investigations (OI) investigation was to determine whether an AWS well logger failed to conduct a radiation safety survey and whether a radiation safety survey record was falsified by the employee. The synopsis to the OI report, discussion of the apparent deliberate violation, and a summary of the OI investigation were transmitted to you by letter dated October 18, 1999. In addition, Mr. Douglas Collins communicated the OI findings and the apparent violation involving your actions while Radiation Safety Officer (RSO) at AWS during a telephone conversation on October 18, 1999. On January 5, 2000, you attended a closed, transcribed, predecisional enforcement conference that the NRC held to discuss the apparent violation and your actions associated with correcting the violation and preventing recurrence. Enclosure 2 is a listing of attendees at the predecisonal enforcement conference. Enclosures 3 and 4 are copies of the materials submitted by your attorney on your behalf prior to the conference and NRC material presented at the conference, respectively.

Based on the evidence developed by OI and your perspective of this issue, which you discussed during the predecisional enforcement conference, the NRC has determined that a violation of 10 CFR 30.10 (Deliberate Misconduct) occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it were described in detail in our letter dated October 18, 1999. The violation in the Notice involves your deliberate failure as RSO to provide oversight sufficient to ensure the completion of radiation surveys and radiation survey records as required by AWS' License Condition 21 and 10 CFR 30.9. The NRC has issued a Notice of Violation and Proposed Imposition of Civil Penalties to AWS, in part, as a result of your actions. A copy is enclosed for your information. You should note that at both your and AWS' conference, the failure to conduct surveys required by 10 CFR 39.67(c) was discussed. As described in the enclosed AWS enforcement action, the NRC agreed with AWS that corrective action for a previous June 1, 1998, NRC cited violation had not yet been completed at the Elderton facility at the time of the July 15, 1998 inspection. Therefore, a violation was not cited against 10 CFR 39.67(c). However, based on the discussions at the conference and the evidence gathered during the investigation, surveys of the well site were also not routinely

IE01

performed, and the violation was recharacterized as a violation of the AWS license, specifically, Condition 21. This recharacterization also applies to your failure to oversee the conduct of required surveys as the RSO.

You indicated during the predecisional enforcement conference and in your statement submitted by your attorney, Mr. William H. Briggs of Ross, Dixon & Bell, L.L.P., dated December 30, 1999, that you were aware that logging engineers were not performing radiation surveys. You also admitted to not performing radiation surveys in the past. You stated that well site survey results revealed the same levels of background radiation time after time and the unchanging measurements led you to become complacent and assume that well site surveys would always yield the same low reading unless the well logging source was lost or damaged. You also stated that although you were aware of the requirement to conduct surveys, your failure to assure surveys were conducted was not deliberate, but due to a lack of understanding of the importance of the requirement and complacency. You also stated that you had no intent to violate the regulation and you believed that a visual confirmation of the location of the source met the intent of the requirement. You further stated that you now understand that visual inspection does not substitute for the actual conduct of radiation surveys since visual inspection alone could fail to detect a leaking or damaged source. Although no significant radiological event occurred during this time frame, the consequences of failing to perform surveys could have resulted in the unnecessary spread of contamination or the exposure of members of the public and AWS employees.

As stated earlier, the NRC concluded that the violation described in the Notice was deliberate. This conclusion is based on the fact you knew that performance of surveys was required by the NRC, that such surveys were not being performed, and that records of surveys did not accurately reflect performance of surveys on the day and location indicated. Deliberate violations of regulatory requirements are of significant concern to the NRC because the success of our regulatory programs is based in no small part on the honesty and integrity of licensees and their employees. The completeness and accuracy of records required by NRC regulations and the license are essential elements to providing NRC with the required assurance that activities are being conducted safely and in accordance with regulatory requirements. In addition, deliberate misconduct on the part of an RSO is of particular significance because this individual is specifically tasked with assuring that activities at licensed facilities are conducted safely and in accordance with license and regulatory requirements. Therefore, in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, the violation in the enclosed Notice has been categorized at Severity Level III.

In determining the appropriate sanction to be assessed in this case, the NRC considered issuing an Order prohibiting your involvement in NRC licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of your forthrightness in the case, your sincerity with respect to the events which occurred, and the corrective actions taken by AWS. You should be aware, however, that should there be evidence of similar conduct on your part in the future, you may be subject to further enforcement action that could include issuance of an Order prohibiting your involvement in NRC-licensed activities for a period of years.

The NRC has concluded that information regarding the reason for the violation and the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed in NRC documents, in the written statement you provided prior to the predecisional enforcement conference, and in the transcripts of that conference. Therefore, you are not required to respond to the Notice unless the description therein does not accurately reflect your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, your response, if any, and our letters of October 18, November 15, December 2, and December 7, 1999, with your home address removed, will be placed in the NRC Public Document Room.

If you have any questions regarding this letter, please contact Douglas M. Collins, Director, Division of Nuclear Materials Safety at (404) 562-4700.

Sincerely,

Luis A. Reyes
Regional Administrator

Enclosures:
1. Notice of Violation
2. Conference Attendees (not to be published in NUREG-0940)
3. AWS' Notice of Violation and Proposed Imposition of Civil Penalties
4. Material presented by Mr. Frye (not to be published in NUREG-0940)
5. Material presented by NRC (not to be published in NUREG-0940)

cc w/encls 1, 2, 4, and 5:
Allegheny Wireline Services
ATTN: Mr. Peter Valenti
President
P. O. Box 506
Weston, West Virginia 26542

CERTIFIED MAIL NO. 7099 3400 0000 1701 8661
RETURN RECEIPT REQUESTED

Distribution w/encls:
R. Borchardt, OE
B. Summers, OE:IA file (2 w/letterhead)
W. Travers, EDO
C. Paperiello, DEDMS
L. Chandler, OGC
D. Dambly, OGC
D. Cool, NMSS
E. Julian, SECY
B. Keeling, OCA
Enforcement Coordinators
RI, RIII, RIV
E. Hayden, OPA
G. Caputo, OI
H. Bell, OIG
N. Hilton, OE
A. Boland, EICS
M. Lesser, RII
C. Hosey, RII
D. Collins, RII
R. Gibson, RII
B. Smith, NMSS
C. Evans, RII
K. Clark, RII
PUBLIC
RII Docket File, DNMS

* See Previous

SEND TO PUBLIC DOCUMENT ROOM? YES							
OFFICE	RII:DNMS	RII:EICS	RII:ORA	ORA	NMSS	OGC	OE
Signature	*	*	*	*			
NAME	DCollins	ABoland	CEvans	BMallett	DCool	DDambly	RBorchardt
DATE	1/14 /00	1/13 /00	1/13 /00	1/18 /00	2/3 /00	2/1 /00	2/2 /00
COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

OFFICIAL RECORD COPY DOCUMENT NAME:G:\OECASES\Nick\ia99050 with HQ comments.wpd

CONTAINS PREDECISIONAL INFORMATION - NOT FOR PUBLIC DISCLOSURE
WITHOUT THE APPROVAL OF THE DIRECTOR, OFFICE OF ENFORCEMENT

Distribution [Home Address Deleted] w/encls 1, 2, 4, and 5:
R. Borchardt, OE
B. Summers, OE:IA file (2 w/letterhead)
W. Travers, EDO
C. Paperiello, DEDMS
L. Chandler, OGC
D. Dambly, OGC
D. Cool, NMSS
E. Julian, SECY
B. Keeling, OCA
Enforcement Coordinators
RI, RIII, RIV
E. Hayden, OPA
G. Caputo, OI
H. Bell, OIG
N. Hilton, OE
A. Boland, EICS
M. Lesser, RII
C. Hosey, RII
D. Collins, RII
R. Gibson, RII
B. Smith, NMSS
C. Evans, RII
K. Clark, RII
PUBLIC
RII Docket File, DNMS

Distribution [w/Home Address] w/encls 1, 2, 4, and 5:
A. Boland, RII

Home Address Deleted

SEND TO PUBLIC DOCUMENT ROOM? YES							
OFFICE	RII:DNMS	RII:EICS	RII:ORA	ORA	NMSS	OGC	OE
Signature			NLO for				
NAME	DCollins	ABoland	CEvans	BMallett	DCool	DDambly	RWBorchardt
DATE	/ /00	/ /00	2/ 7 /00	/ /00	/ /00	/ /00	/ /00
COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

OFFICIAL RECORD COPY DOCUMENT NAME:M:\ENFORCE\99CASES\99034allegh.dir\ia99-50FINAL

* See Previous Concurrence

NOTICE OF VIOLATION

Mr. Leonard Frye IA 99-050

During an NRC Office of Investigations investigation initiated on August 13, 1998, and an NRC inspection conducted on July 15, 1998, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions", NUREG-1600, the violation is listed below:

> 10 CFR 30.10 states, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation or deliberately submit to the NRC or the licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.
>
> Condition 21 of NRC License No. 47-11976-01 requires, in part, that except as specifically provided otherwise in this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the application dated February 23, 1995.
>
> Item 10, Section 2 of the application under Allegheny Wireline Service Radiation Program, provides for delegation of authority from the Radiation Protection Officer to the Radiation Safety Officer, and requires the Radiation Safety Officer (RSO) to conduct or cause to be conducted the programs and responsibility delegated by the Radiation Protection Officer. The duties delegated to the RSO include ensuring the performance of site surveys, the completion and maintenance of survey records, the compilation of personnel monitoring and vehicle surveys records, the training and qualifying of personnel, and the conducting of periodic safety checks to assure the effectiveness of the radiation protection program.
>
> Contrary to above, as of July 15, 1998, as the RSO at the Elderton, Pennsylvania site, you deliberately failed to conduct or cause to be conducted aspects of the radiation protection program. Specifically, on numerous occasions you knew that required site surveys were not performed and that records were being completed to reflect that surveys were performed when they were not. The accuracy of these records is material because they provide the required assurance that licensed activities are being conducted safely and in accordance with regulatory requirements. (01013)

This is a Severity Level III violation (Supplement VII)

The NRC has concluded that information regarding the reason for the violation and the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed in NRC documents, in the written statement you provided prior to the predecisional enforcement conference, and in the transcripts of that conference. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective action or your position. In that case, or if your choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control

Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region II, within 30 days of the date of the letter transmitting this Notice of Violation.

If you choose to respond, your response will be placed in the NRC Public Document Room (PDR). Therefore, 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.

Dated at Atlanta, Georgia
this 8th day of February, 2000.

LIST OF ATTENDEES

Nuclear Regulatory Commission:

L. Reyes, Regional Administrator
D. Collins, Director, Division of Nuclear Materials Safety (DNMS)
A. Boland, Enforcement Officer, Enforcement and Investigations Coordination Staff (EICS)
C. Evans, Regional Counsel
D. Dambly, Assistant General Counsel for Materials Litigation and Enforcement, Office of General Counsel
J. Euchner, Attorney, Office of General Counsel
W. McNulty, Office of Investigations, Field Director

On Behalf of the Individual:
L. Frye, Plant Manager
W. Briggs, Attorney for L. Frye

Others:
P. Valenti, Allegheny Wireline Services

ROSS, DIXON & BELL, L.L.P.
601 PENNSYLVANIA AVENUE, N.W.
NORTH BUILDING
WASHINGTON, D.C. 20004-2688
(202) 662-2000
FACSIMILE (202) 662-2190

6 PARK PLAZA
SUITE 1200
IRVINE, CALIFORNIA 92614-8529
(949) 622-2700
FACSIMILE (949) 622-2739

550 WEST B STREET
SUITE 400
SAN DIEGO, CALIFORNIA 92101-3535
(619) 235-4040
FACSIMILE (619) 231-8796

WILLIAM H. BRIGGS, JR.
TELEPHONE: (202) 662-2063
EMAIL: BBRIGGS@RDBLAW.COM

December 30, 1999

VIA FEDERAL EXPRESS

Anne T. Boland
Enforcement Officer
Enforcement and Investigations Coordination Staff
United States Nuclear Regulatory Commission
Region II
61 Forsyth Street, SW
Atlanta, Georgia 30303-3415

Re: Submission on behalf of Leonard Frye
Predecisional Enforcement Conference IA 99-050
Office of Investigations Report No. 2-98-018

Dear Ms. Boland:

On October 18, 1999, Mr. Douglas M. Collins, Director, Division of Nuclear Materials Safety, Region II of the Nuclear Regulatory Commission ("NRC"), advised Mr. Leonard Frye of Allegheny Wireline Services that the NRC was considering escalated enforcement action against him in his individual capacity. Based upon an investigation by the NRC's Office of Investigations ("OI"), Mr. Collins' October 18 letter informed Mr. Frye that

> [a]n apparent violation of the NRC's regulation prohibiting deliberate misconduct, 10 C.F.R. 30.10 . . . has been identified and is being considered for escalated enforcement action . . . . The evidence developed during the OI investigation substantiated that you, acting in your capacity as the Radiation Safety Officer of the Elderton, Pennsylvania facility, intentionally and deliberately failed to provide adequate oversight concerning the

> performance of radiation surveys and completion of radiation survey records.

Id. at 1.

The October 18 letter further stated that "the NRC has not made a final determination that violations of NRC requirements occurred or that enforcement action will be taken against you." Id. at 2. The letter invited Mr. Frye to attend an individual predecisional enforcement conference to discuss the charges against him, and it invited him to submit a written reply to the apparent violation prior to or during the conference. Id.

This letter and the accompanying sworn Declaration of Leonard Frye ("Frye Declaration") are filed in response to the NRC's October 18 letter and for the NRC's consideration at the upcoming January 5, 2000 predecisional enforcement conference. As these documents set forth, and as will be discussed in more detail at the predecisional enforcement conference, NRC enforcement action against Mr. Frye is not justified on the facts of this case because Mr. Frye did not deliberately violate any NRC regulation. Moreover, there are significant extenuating and mitigating factors that make NRC enforcement action against Mr. Frye entirely inappropriate.

DISCUSSION

I. Mr. Frye's management lapses were not deliberate efforts to evade NRC regulations or license requirements.

10 C.F.R. § 30.10 ("Section 30.10") gives the NRC authority to take enforcement action directly against unlicensed persons, such as Mr. Frye, only in certain narrowly defined circumstances – when those individuals "engage in deliberate misconduct . . . ." (Emphasis added). "Deliberate misconduct" is defined as "an intentional act or omission that the person knows . . . would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any license issued by the Commission . . ."

When the Commission promulgated Section 30.10 it repeatedly made clear that that regulation reached deliberate misconduct, and only deliberate misconduct.

56 Fed. Reg. 40664, et seq. (Aug. 15, 1991). The Commission emphasized that "the rule does not apply in cases of negligence, honest mistake, or ignorance." Id. at 40675. And in no uncertain terms, the Commission described how narrow the rule's application would be:

> the range of actions that would subject an individual to action by the Commission does not differ significantly from the range of actions that might subject the individual to criminal prosecution.

Id. (Emphasis added). As the Commission further elaborated:

> It would be an erroneous reading of the final rule on deliberate misconduct to conclude that conscientious people may be subject to personal liability for mistakes. The Commission realizes that people may make mistakes while acting in good faith. Enforcement actions directly against individuals are not to be used for activities caused by merely negligent conduct. These persons should have no fear of individual liability under this regulation, as the rule requires that there be deliberate misconduct before the rule's sanctions may be imposed.

Id. at 40681.

Thus, in order to find that Mr. Frye has violated Section 30.10, the NRC must first find that he deliberately took action to violate an NRC regulation or a license condition.

As more fully set forth in the Frye Declaration, Mr. Frye readily concedes that over the years his supervision of radiation surveys lapsed, and he permitted his engineers to engage in improper radiation survey practices. Frye Declaration at ¶ ¶ 7, 9-10. Because these surveys always measured the same low levels of background radiation time after time, the survey readings routinely reflected the same low background radiation levels. As a result, Mr. Frye and his engineers became complacent; they assumed that the surveys would always yield the same low readings unless a radiological source was lost or damaged. Since the sources were always carefully accounted for, Mr. Frye let his engineer slip into practices of not conducting and improperly reporting radiological surveys. Id. at ¶ ¶ 9, 16(b).

Mr. Frye admits that he was wrong to permit these practices to occur. However, and importantly, Mr. Frye's management lapses were not conscious, deliberate efforts to evade NRC or license requirements. Id. at ¶ 10. Indeed, no one ever suggested that the radiation survey practices violated NRC regulations or Allegheny license requirements. Rather the errors made by Mr. Frye and his engineers were thoughtless mistakes that arose because of complacency. These mistakes cannot be fairly characterized as conduct that "does not differ significantly from the range of actions that might subject the individual to criminal prosecution." 56 Fed. Reg. at 40675.

II. Extenuating and mitigating circumstances make this the wrong case for significant individual enforcement action.

Even in cases of deliberate misconduct, the Commission has recognized "that enforcement actions against individuals are significant actions that need to be closely controlled and judiciously applied." 56 Fed. Reg. 40676. See also, Enforcement Policy at § VIII. To this end, the Commission has promised that it will temper its enforcement power with justice and that it will not take enforcement action against an individual when extenuating and mitigating circumstances are present. See Enforcement Policy at § VIII. There are ample extenuating and mitigating circumstances in this case. No legitimate enforcement purpose will be served by taking enforcement action against Mr. Frye for his role in this matter.

A. Mr. Fyre admits that he made mistakes in this matter.

The Commission has promised to consider as a mitigating factor "[t]he attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility." Enforcement Policy at § VIII. Mr. Frye readily admits that he allowed the radiation survey practices and reporting procedures at the Elderton station to lapse into careless disregard for the proper procedures. He accepts responsibility for these mistakes. Frye Declaration at ¶ 17.

However, it is important to recognize that when Mr. Frye's errors were brought to his attention, he admitted that he had made careless and thoughtless mistakes, and he made certain that the practices which led to this enforcement conferences were corrected promptly. After July 1998 Mr. Frye focused on the improper radiation survey practices that the NRC identified. At that time he

trained his personnel to conduct radiation surveys properly and to report the results of each survey accurately, and he instituted procedures to insure that these practices would not occur in the future. Id. at ¶ 4, 13-15. The procedural errors which the Elderton station slid into before July 1998 are past history. In large part this is because Mr. Frye accepted responsibility for his past errors and, before he was replaced as the Radiation Safety Officer for the Elderton station, he took firm action to insist on rigorous adherence to procedures and attention to detail at the Elderton station.

B. Mr. Fyre has been punished enough and further punishment is not necessary to serve any legitimate enforcement purpose

Make no mistake about it, regardless of what the NRC decides to do after the predecisional enforcement conference, Mr. Frye has already been punished for his mistakes in this matter. Mr. Frye has had to deal with enormous personal and professional stress as a result of this matter. He lost his duties as Radiation Safety Officer. Id. at ¶ 16(c). His integrity and honesty have been questioned by the NRC. Id. He has worried about the financial impact of NRC enforcement action on his wife and his future security. Id. at ¶ 16(d). Having to go through this process and worry about the possible outcomes has been significant punishment.

Importantly, the goals of regulatory enforcement action have already been served in this case; the NRC's actions in this matter have had a positive effect on the radiation survey practices at the Elderton station. Mr. Frye has learned from this experience; important changes have been made in the practices at the Elderton station; and the NRC can rest assured that the mistakes that have led to this enforcement conference will not be repeated by Mr. Frye or others at the Elderton station. Id. at ¶ ¶ 4, 13-15. In short, the NRC has already been effective in correcting the past practices that led to this predecisional enforcement conference and in obtaining full compliance with regulatory and license requirements. Further action against Mr. Frye is not necessary and would not serve any legitimate regulatory purpose.

C. Mr. Frye should be judged on his entire record, not just the events that are the subject of this enforcement conference.

Finally, we ask the NRC to consider Mr. Frye's entire record before it takes any enforcement action against him personally. He has worked in the well-logging industry with nuclear sources for almost 23 years, and there is nothing in Mr. Frye's record but long and dedicated service to his fellow workers, to his employer, and to the public health and safety. Id. at ¶ ¶ 5, 16(e). Considering the entire record of Mr. Frye's service and work, it would be wrong to take significant enforcement action against Mr. Frye based upon his mistakes in this matter.

CONCLUSION

For the reasons set forth herein, in the Frye Declaration, and for such further reasons that may come before the NRC at the January 5, 2000 predecisional enforcement conference, we urge the NRC not to take any individual enforcement action against Mr. Frye for the matters described in the October 18, 1999 letter.

Very truly yours,

ROSS, DIXON & BELL, L.L.P.

By _____
William H. Briggs, Jr.

WHB/jmh

DECLARATION OF LEONARD FRYE

I, Leonard Frye, submit this sworn Declaration to the Nuclear Regulatory Commission ("NRC") for its consideration in connection with my January 5, 2000 predecisional enforcement conference.

INTRODUCTION

1. I received an October 18, 1999 letter from Douglas M. Collins, Director, Division of Nuclear Materials Safety, that advised me that the NRC was considering taking enforcement action against me personally and that asked me to come to a predecisional enforcement conference to discuss this matter. The October 18 letter told me that the NRC Office of Investigations ("OI") had conducted an investigation and concluded that I

> intentionally and deliberately failed to provide adequate oversight concerning the performance of radiation surveys and completiion of radiation survey records. Specifically, under your oversight as Radiation Safety Officer, site surveys were not performed on numerous occasion as required by Condition 21 of AWS's NRC License and on numerous occasions records of surveys were documented without the surveys being performed. Although you were aware of these deficiencies, you did not exercise the responsibility of the RSO, as required, to ensure that these aspects of the radiation safety program were correctly performed.

October 18 Letter at 1. The letter also advised me that based on this finding I could be sanctioned by the NRC and that those sanctions could include an order prohibiting my involvement with NRC-licensed activities. Id. at 2.

2. The October 18 letter stated that I could provide a written reply to the NRC for its consideration. This is that written reply. In addition, at the January 5, 2000 predecisional enforcement conference I will try to answer any questions you may have about this matter.

DISCUSSION

3. As you will see when I appear at the predecisional enforcement conference, I am not a good speaker. I have an eleventh grade education, and I have worked all my life. Although I may not be highly educated, I am an honest, hard working man who tries hard to do the right thing. There is no doubt that I made mistakes in the way I supervised (or did not supervise) the conduct and reporting of radiation surveys prior to July 1998, and I take responsibility for those mistakes.

4. At the same time, however, I want to emphasize that the NRC investigations and reports that have led to this enforcement conference have been a wake-up call for me. The conduct and reporting of radiation surveys has changed radically since July 1998, and I am confident that our current practices fully comply with NRC regulatory and Allegheny license requirements. Since July 1998 I have instructed our engineers in how to conduct radiological surveys, and I have insisted that the paper work reflecting those surveys be accurate in all respects. There have been significant

improvements in our practices since July 1998; the mistakes we made prior to that time have been corrected; and, since July 1998, we have been conducting and keeping records of radiological surveys "by the book."

5. I have been in the well-logging industry since 1977. I have been with Allegheny Wireline Services ("Allegheny") since 1985 when I opened the Elderton, Pennsylvania office for Allegheny. Under my supervision the Elderton facility has grown from three people to twelve. Our operations have always been conducted safely and I am proud of the safety record we have compiled in the nearly 15 years that I have supervised the Elderton facility.

6. I understand, and I have always understood, the health and safety implications of dealing with radiological materials. I make sure, and I have always made sure, that those who work with me understand the risks associated with these materials and take whatever steps are necessary to protect the public from these risks. My focus has always been to protect the public by insuring our sources are properly maintained, secured and accounted for and that they are not lost or damaged. I have been successful in this area. I am confident that we have never lost or damaged a source in a way that has caused the release of radiation on any job we have ever performed.

7. As this experience has painfully taught me, however, I have not placed the same emphasis on following survey procedures and keeping records

as I have on protecting our sources. For a period of time prior to July 1998 we became complacent and careless in our procedures and record keeping concerning radiological surveys. I allowed this to happen at Elderton and that was a mistake on my part which I sincerely regret. This was not some deliberate scheme on my part or on the part of any of our engineers; no one ever suggested that we were doing something wrong – even though in hindsight it is obvious that we were. Our actions were careless, stupid, and wrong, but they were not calculated attempts to ignore the regulations and proper procedures.

Conducting and Reporting Radiological Surveys

8. In order to try to explain my practices concerning radiological surveys, I want to discuss three separate time periods: (1) the period before May 1998 (when I had a heart attack that took me out of the office for several months); (2) the period between July 6, 1998 (when I returned from my heart attack) and July 15, 1998 (when the NRC investigated the Elderton facility); and (3) the period since July 1998.

9. **Practices prior to May, 1998.** I had a heart attack in May, 1998 which took me out of the office until July 6, 1998. Prior to my heart attack, I understood that "before" and "after" readings from radiological surveys (using a meter to check the radiation at a work site) were only required to be made at

the wellhead of the well being logged. Readings at the wellhead measured the background radiation at the wellhead; invariably these background readings would be around .01 or .02. Assuming that the radiological source was not lost or damaged during the job (something that would be obvious to the engineer performing the job), both the before and after readings at the wellhead would be identical and would be very low, approximately .01 or .02. Because the meter readings were routinely very low and were always the same both before and after the job, over time we begin to assume that we knew what these readings would always be. In short, we became complacent, and we slipped into a mindset that it was not very important to conduct a survey if the result was going to always be the same low reading before and after the job.

10. It was wrong for me not to insist that radiological surveys be conducted for each job and that the readings on each survey be recorded in the appropriate paper work. I know that it is important to follow all our procedures, but over time, prior to May 1998, I became careless about insisting that our engineers conduct and accurately report radiological surveys. It never crossed my mind that we were deliberately refusing to follow a regulation or a license condition, I didn't even think about why I allowed myself and our facility to become careless. In hindsight, however, I believe that I just slipped into the belief that radiation surveys served no valuable purpose since the

background radiation was always the same small reading unless we lost or damaged the source.

11. **Practices from July 6 to July 15, 1998.** As noted above, in May 1998 I had a heart attack. I was out of the office until July 6, 1998. When I returned I faced a mountain of paper on my desk and a huge backlog of work. I began to work my way through the paper and the backlog, and sometime after I returned to work (I can't remember the exact date), I found a memorandum on my desk from Mike Sherrell, Allegheny's Radiation Safety Office ("RSO"). Exhibit A. That memorandum reported on some NRC violations that had been found at Allegheny's Weston facility in May 1998. I am sure I looked at the memorandum, and I put it on the bulletin board in our office. At that time, however, I did not study the document; I did not talk to my people about it; and I really did not focus on the violations or corrective actions that were reported in the memorandum. Again, this proved to be a costly and stupid mistake on my part.

12. On July 15, 1998 the NRC showed up to inspect the Elderton facility. Because I had not focused on Mr. Sherrell's memorandum, I had not thought about, much less implemented, the corrective actions that were discussed in that document. During the July 15, 1998 inspection the NRC learned that we were still not properly conducting and reporting radiological

surveys – i.e. we were still engaged in the survey practices and reporting that we had been doing prior to May 1998.

13. **Practices since July 1998.** As a result of the NRC's July 15 inspection of the Elderton facility, it immediately became clear to me that our prior careless practices involving conducting and reporting on radiological surveys had to be changed significantly. First, I learned for the first time that the NRC wanted the surveys to cover the entire area between the truck and the wellhead, not just to survey the radiation at the wellhead. Second, I realized, really for the first time, that improperly reporting survey data was a serious violation of the NRC's rules and our own procedures. That was the first time that it dawned on me that our past practices could be viewed as deliberately misrepresenting facts. In response to the NRC's July 15 investigation, I promptly conducted training at the Elderton site; I taught everyone how the NRC wanted radiation surveys conducted; and I emphasized that all records reporting on radiation surveys would be accurately filled in. We also instituted a practice whereby I would initial the radiation survey entries and insure that they were actually reporting the information that the survey revealed.

14. Since July 1998, I am confident that our radiation survey practices have been in full compliance with the NRC's regulations and expectations as well as with Allegheny's requirements. Immediately after July 1998, I made it

a practice to conduct far more personal inspections and audits of work sites than I previously had conducted; I routinely questioned engineers about conducting the radiation surveys; and I initialed the reported survey data to indicate that I was satisfied that it was accurate. Approximately 4-6 months ago our facility was inspected by the NRC. At the conclusion of the inspection, I asked the inspector how things looked, and he replied, "Great." I told the inspector that I was glad that he had come to inspect the facility. I asked him to return again. I told him that I welcomed an annual inspection from the NRC to make sure that we were fully in compliance with any changes in the law and to advise us if any changes in our practices were necessary.

15. I am confident that the practices that led to this enforcement conference have been corrected and will not be repeated. I am certain that any inspection by the NRC will reflect this, and I welcome the opportunity to show you that we have learned from our mistakes.

Other things I ask the NRC to consider.

16. I understand from reading the NRC's enforcement policy that there are several things that the agency takes into account as it considers whether to take enforcement action against individuals. I urge the NRC to keep the following in mind as it considers whether to ban me from the industry or to take other enforcement action against me.

a. I certainly wish that I had not made the mistakes that I made, but I did make these mistakes, and I have candidly and honestly admitted these mistakes to you, to various NRC inspectors and investigators who I talked to, and to the company. This has been a horrible experience for me, but I have learned from it, and I strongly believe that Allegheny's radiation survey practices and reporting procedures have been improved because of the important lessons this experience has taught me and others in the company. The one person you can be sure of who will not take procedures lightly in the future is me.

b. I honestly did not believe that our past incorrect radiation practices had safety consequences. What I thought at the time is that the radiation surveys that we were not performing were just meaningless surveys that were always going to yield the same low meter readings. What I failed to think of at the time, but what I fully understand now, is that all procedures must be complied with and that all records must be kept accurately and completely. I know full well that I do not have the right to pick and chose the procedures we will follow or the records that we will accurately prepare.

c. I have been punished for what I have done. I recently had my RSO duties removed from me. My friends and colleagues are aware of this enforcement conference. It is a cloud on my integrity and my record. I can

assure you that I have been punished for what I did, and I have learned a valuable and painful lesson – we must go "by the book;" in this business, procedures are important.

d. If you take my job from me, you take the sole means of support for my wife and me. She is worried; I am worried; this entire experience has taken its toll on us. Please let me put it behind me and get on with my personal and professional life. I am 60 years old. I have served this industry well, and I can continue to do so for my remaining working years. It is too late for me to learn another profession; it is too late for me to start another career.

e. I have never been in trouble with the NRC or the government before. Our business also deals in explosives and this aspect of our work is regulated by the Bureau of Alcohol, Tobacco, and Firearms ("ATF"). We are inspected annually by ATF and I have never been accused of any wrongdoing by that agency.

17. I am a honest person who made stupid, thoughtless mistakes regarding the conduct and reporting of radiation surveys. I accept responsibility for these mistakes, and I have learned much from them. I will not repeat the mistakes that have led me to appear before you. In fact, I believe I can use this experience to convince others of the importance of

following all procedures and accurately preparing all paper work. I urge you to let me turn this experience into something positive for myself, for my company, and for radiological safety.

CONCLUSION

18. I will answer any questions that I can about what I did and what I have learned from this experience at the predecisional enforcement conference. And I will ask you to let me put this behind me and move on with my career and my life.

I declare under penalty of perjury that the foregoing is true and correct.

December 29, 1999

Leonard Frye

Leonard Frye

DUNBAR, WV
(304) 768-4933

LONDON, KY
(606) 864-9165

ALLEGHENY WIRELINE SERVICES, INC.

TITUSVILLE
(814) 827-4034

ELDERTON, PA
(412) 354-3090

P.O. BOX 506, WESTON, WV 26452
Phone: (304) 269-2009 FAX: (304) 269-6328

TO: All Station Managers/Field Station Radiation Supervisors
FROM: Mike Sherrell, RSO
SUBJECT: ***NCR VIOLATIONS***

It is the responsibility of the Station Managers/Field Station Radiation Supervisors to ensure that all NRC rules and regulations are met and carried out on a regular basis. In a recent NRC inspection, a number of violations were found and I will address each violation below and give the corrective actions to be taken immediately. These violations are not to be taken lightly as a repeated offense found in any of the violations could mean our license being revoked.

The inspection was a very thorough inspection, it involved other stations other than Weston, also the inspector visited a job sight. I think we should expect another inspection in the very near future to ensure our compliance, and I am sure it will include other stations.

The forms that we fill out in the field and at the station are not to be filled out by just filling in the blanks. We should go through the correct process to get the data to put in the blanks.

VIOLATION 1

On a number of occasions the inspector found that we did not do before and after surveys. Also, he questioned engineers on their practices and found they were just filling in the blanks. As a Station Manager, it is your responsibility to see that this survey is being carried out and that the forms are correctly filled out by initialing each one.

VIOLATION 2

The inspector found on a number of occasions that the Geiger Counter was out of Calibrations (6 months) and the engineer still used the meter. It is a violation to use the meter one day out of Calibrations. Instruct all engineers to request a new meter one month before it expires and not wait until it does expire.

VIOLATION 3

The inspector found 4 sources that were not leak tested at the required 6 month interval. The sources were 2 months overdue. Do the leak test the moment you receive the kits, do not wait because by the time I realize that they were not done a month has gone by.

VIOLATION 4

The inspector found that we were not doing our semi-annual inspections. The only inspections that were done were the ones I was doing during the training sessions; in other words they were only being done annually. These are to be done every 6 months, and they will be done when our leak tests are being done and copies forwarded to Weston.

VIOLATION 5

The inspector found we were using personnel who were not fully trained. No employee is to handle or use radiation until they have been trained and the station has all records to indicate such training. We cannot send an untrained person on a logging job unless there is going to be 3 people on location even if the engineer does all the source handling.

VIOLATION 6

The inspector found that not all engineers have been reviewed annually or the station did not have the papers to prove it. All managers will ensure that all engineers have been reviewed and if anyone is transferred from one station to another, make sure that the training records are forwarded with the employee.

VIOLATION 7

As mentioned above, the inspector found where some training records were not forwarded with the employee. Make sure you have all the records required for each employee on file.

Mil A, RSO

PREDECISIONAL ENFORCEMENT CONFERENCE AGENDA

MR. LEONARD FRYE

JANUARY 5, 2000 @ 1:00 PM

NRC REGION II OFFICE, ATLANTA, GEORGIA

I. OPENING REMARKS
   L. Reyes, Regional Administrator

II. NRC ENFORCEMENT POLICY
   A. Boland, Enforcement Officer

III. STATEMENTS OF CONCERNS / APPARENT VIOLATION
   D. Collins, Director
   Division of Nuclear Materials Safety

IV. INDIVIDUAL PRESENTATION
   Mr. Leonard Frye

V. BREAK / NRC CAUCUS

VI. NRC FOLLOWUP QUESTIONS

VII. CLOSING REMARKS
   L. Reyes, Regional Administrator

Issue

10 CFR 30.10 requires in part that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation; or deliberately submit to the NRC or the licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Condition 21 of NRC License No. 47-11976-01 requires, in part, that except as specifically provided otherwise in this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the application dated February 23, 1995.

The apparent violation discussed at this predecisional enforcement conference is subject to further review and is subject to change prior to any resulting enforcement action.

Item 10, Section 2 of the application under Allegheny Wireline Services Radiation Program, provides for delegation of authority from the Radiation Protection Officer to the Radiation Safety Officer; and requires the Radiation Safety Officer to be responsible to the radiation protection officer and in general is to conduct or cause to be conducted the programs and responsibility delegated by the Radiation Protection Officer. The duties include site surveys and records, personnel monitoring records and compilation, vehicle survey records, training and qualifying personnel, and conducts periodic safety checks to assure the radiation protection program.

Through July 16, 1998, L. Frye, the Radiation Safety Officer at the Elderton PA site, intentionally and deliberately failed to conduct or cause to be conducted aspects of the radiation program, in that on numerous occasions site surveys were not performed when required by regulation and that on numerous occasions records of surveys were made without having performed the required surveys.

The apparent violation discussed at this predecisional enforcement conference is subject to further review and is subject to change prior to any resulting enforcement action.