



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

IA-01-015

MR. KENNETH D. COVELL
[Home Address Deleted
Under 10 CFR 2.790(a)]

SUBJECT: RESPONSE TO NOTICE OF VIOLATION
[OFFICE OF INVESTIGATIONS REPORT NO. 3-2000-002]

Dear Mr. Covell:

This refers to your letter, dated October 23, 2001, in response to the Notice of Violation (Notice) issued on September 24, 2001, concerning a violation of 10 CFR 40.10, "Deliberate Misconduct." The violation pertained to your deliberate failure on July 31, 1998, to ensure that Nuclear Regulatory Commission (NRC)-licensed material, uranium, inside concrete pipes located in an unrestricted area of Earthline Technologies (previously RMI Environmental Services) was secured from unauthorized removal. On August 1-2, 1998, the pipes were removed from the company's grounds.

In your October 23, 2001, letter, you denied that you engaged in deliberate misconduct on July 31, 1998. Your principal reason for denying the violation was that on July 31, 1998, you informed the RMI/Earthline Director of Environmental Safety and Health of the direct radiation survey taken on a pipe. Further, you recommended to the Director that appropriate measures (e.g. roping off the area, posting the area) be taken. However, the Director indicated to you that he did not want to take those measures until more information was available about the radiological condition of the pipes.

We reviewed the information in your letter, along with information from the NRC Office of Investigations report and from the predecisional enforcement conferences held on April 12 and June 27, 2001. Based on our review, we determined that at the time of your discussion with the Director, you were aware of the results of both the direct radiation survey and laboratory analyses of sediment samples from within the pipes. The results of laboratory analyses indicated that uranium was present in the sediment from within the pipes. Since you did not tell the Director that laboratory analyses had confirmed the presence of uranium inside the pipes, the Director was unable to make a fully informed decision. By not telling the Director about the results of the laboratory analyses, you were the RMI/Earthline supervisor on July 31, 1998, with the most complete knowledge about uranium inside the pipes. Further, you knew the pipes were stored in an unrestricted area at the RMI/Earthline facility with ready access to a public highway, and you became aware on July 31, 1998, that the pipes either were sold or were being sold. Finally, you had the authority to direct that the NRC-licensed material be secured against unauthorized removal without first obtaining approval from RMI/Earthline management. Therefore, we concluded that your failure on July 31, 1998, to secure NRC-licensed material from unauthorized removal was deliberate.

Mr. K. Covell

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Based on our review, we found that your October 23, 2001, letter did not provide any new facts for the NRC staff to consider in assessing your request to withdraw the Notice. Therefore, we concluded that you have not provided an adequate basis to withdraw the violation and that the violation occurred as stated in the Notice.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS) accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

Frank J. Congel, Director
Office of Enforcement

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. K. Covell

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