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Facility License No. R-81
Special Nuclear Material
License No. SNM-639

MEMORANDUM FOR: Docketing and Service Section
Office of the Secretary of the Commission

FROM: Dudley Thompson, Executive Officer for Operations Support
Office of Inspection and Enforcement

SUBJECT: UNION CARBIDE CORPORATION
TUXEDO, NEW YORK

One signed original of an Order Imposing a Civil Monetary Penalty which was issued to Union Carbide Corporation on July 11, 1980, is enclosed for your transmittal to the Office of the Federal Register for publication. Additional conformed copies (12) of the Order are enclosed for your use.

Dudley Thompson
Executive Officer for Operations
Support
Office of Inspection and Enforcement

Enclosures:
As stated

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	Facility License No. R-81
Union Carbide Corporation)	Special Nuclear Material
Medical Products Division)	License No. SNM-639
P. O. Box 324)	EA-80-14
Tuxedo, New York 10987)	

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Union Carbide Corporation, Medical Products Division, P. O. Box 324, Tuxedo, New York (the "licensee") is holder of Facility License No. R-81 and Special Nuclear Material License No. SNM-639 (the "licenses"). License No. R-81 authorizes the operation, at steady-state power levels up to 5,000 kilowatts (thermal), the pool-type nuclear reactor located on its site in Sterling Forest, New York, and is due to expire June 30, 1980. License No. SNM-639 authorizes the use of special nuclear materials in accordance with the statements, representations and conditions specified in the numerous licensee applications and is due to expire January 31, 1981.

II

An investigation of the licensee's activities under the licenses was conducted on January 2-29, 1980, at the Sterling Forest Research Center, Tuxedo, New York. As a result of this investigation, it appears that the licensee has not conducted its activities in full compliance with the conditions of the licenses. A written Notice of Violation was served upon the licensee by letter dated April 7, 1980, specifying the item of noncompliance, in accordance with 10 CFR 2.201. A Notice of Proposed Imposition of Civil Penalties was concurrently served upon the licensee in accordance with Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282) and 10 CFR 2.205, incorporating by

reference the Notice of Violation, which stated the nature of the item of noncompliance and the provisions of NRC Regulations and license conditions.

An answer dated April 28, 1980, to the Notice of Violation and the Notice of Proposed Imposition of Civil Penalties was received from the licensee on May 5, 1980.

III

After consideration of the answer received and the statements of fact, explanation, and argument in denial or mitigation contained therein, as set forth in Appendix A to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the item of noncompliance designated in the Notice of Violation should be mitigated to One Thousand Dollars.

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282) and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The licensee pay the civil penalty in the total amount of One Thousand Dollars within twenty-five days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States, and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may, within twenty-five days of the date of this Order, request a hearing. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within twenty-five days of the date of this Order, the

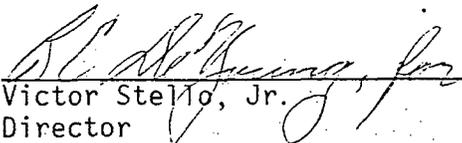
provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the licensee was in noncompliance with the Commission's regulations as designated in the Notice of Violation referenced in Sections II and III above; and,
- (b) whether, on the basis of such an item of noncompliance, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



Victor Stello, Jr.
Director
Office of Inspection
and Enforcement

Dated this 11th day of July, 1980
at Bethesda, Maryland

Enclosure:
Appendix A, Evaluation
and Conclusion

APPENDIX A
EVALUATION AND CONCLUSION

For the item of noncompliance and associated civil penalty identified in the Notice of Violation (dated April 7, 1980), the original item of noncompliance is restated and the Office of Inspection and Enforcement's evaluation and conclusion regarding the licensee's response to the item (dated April 28, 1980) is presented.

Statement of Noncompliance

10 CFR 71.5(a) Transportation of Licensed Material requires that NRC licensees comply with the applicable packaging and transportation requirements of the Department of Transportation in 49 CFR Parts 170-189.

49 CFR 173.393(j) requires packages with radiation dose rates at certain levels to be shipped in a vehicle consigned as exclusive use.

49 CFR 173.392(c)(9) requires that the shipper must provide specific instructions to the carrier for maintenance of exclusive use shipment controls for low specific activity (LSA) radioactive materials shipped in an exclusive use vehicle. These instructions must be included with the shipping paper information.

Contrary to the above, on December 10, 1979, Union Carbide delivered to a carrier LSA licensed materials with radiation dose rates at the levels in 49 CFR 173.393(j) without providing specific instructions for maintenance of exclusive use shipping controls.

This is a Severity Level II Violation (Civil Penalty \$3,000)

Evaluation of Licensee Response

The licensee admits the item of noncompliance but requests that the amount of the civil penalty be reduced. The basis of the request is that although the licensee was the ostensible shipper of the material and prepared the shipping documents, it relied upon the consignee, Nuclear Engineering Company, Incorporated (NECO) to make the shipping arrangements. According to the licensee, it had an understanding and contractual arrangement with NECO, which apparently obligated NECO to provide exclusive use vehicles for the licensee's shipments. It also claims the carrier was obligated by its rate tariff to supply an exclusive use vehicle, and that any violation resulted from confusion as to the respective obligations of NECO and the licensee. The item of noncompliance is not based on whether or not the vehicle was in fact an exclusive use vehicle under NECO's control, but whether the carrier was provided the required instructions. By holding itself out as the shipper in this instance, the licensee assumed the responsibility for following the applicable Department of Transportation (DOT) regulations. The carrier's tariff is evidence of an intention to offer exclusive use vehicles, but is not sufficient to demonstrate compliance with DOT requirements. Whatever arrangement the licensee had with NECO, the fact remains that the carrier was not provided with the required specific instructions for maintenance of exclusive use shipping controls by either

party. The confusion as to respective obligations mentioned by the licensee is not a basis for reducing the penalty, but rather should be viewed as an example of inadequate control of the shipment of radioactive materials by the licensee. However, there is evidence that NECO did provide a vehicle controlled only by NECO. At least the vehicle did not make any pickups and deliveries not consonant with the requirements imposed on exclusive use vehicles.

Conclusion

Since the particular facts of this case tend to indicate that the licensee (the shipper) was not totally unaware of his obligation to provide shipping instructions and his responsibility for following DOT Regulations, and since the licensee, carrier, and consignee did intend for the carrier to only follow NECO's instructions and apparently an exclusive use vehicle was supplied by NECO, the civil penalty is hereby mitigated to One Thousand Dollars.