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JUL 11 1980

Docket Nos.: 70-687
50-54
EA-80-14

Union Carbide Corporation
ATTN: Mr. R. E. Bollinger
Vice President
Nuclear Products
P. O. Box 324
Tuxedo, New York 10987

Gentlemen:

This is in reference to your letter of April 28, 1980, in response to the Notice of Violation and Notice of Proposed Imposition of Civil Penalties sent to you with our letter of April 7, 1980. The April 7 letter concerned an item of noncompliance found during our investigation conducted on January 2-29, 1980, of events involving the transport and disposal of low specific activity radioactive waste from your facility, on or about December 10, 1979.

After careful consideration of your response, we have concluded that the proposed penalty for the item of noncompliance should be mitigated to One Thousand Dollars, and accordingly, we hereby serve the enclosed Order on Union Carbide Corporation imposing a civil penalty in that amount. Appendix A to the Order discusses your request that the civil penalty for the item of noncompliance be reduced.

With regard to the corrective and preventive actions documented in your "STATEMENT OF CORRECTIVE STEPS TAKEN (Pursuant to 10 CFR 2.201(a))", item B) Corrective Steps Taken With Regard to the Preparation of Shipping Documents must call for more explicit instructions to the carrier for maintenance of exclusive use shipment controls. There have been other cases illustrating the need for explicit instructions. For instance, in one case to satisfy a state weight requirement on loads over axles, a carrier broke the seal on a trailer, entered the trailer, and changed the loading pattern. As a result, a box with a high radiation reading was located so that the limit of 49 CFR 173.393(j)(2) was exceeded. In another case, the carrier changed tractors pulling a trailer. The replacement tractor was of a different design than the original tractor, and the radiation level in the replacement tractor exceeded the 49 CFR 173.393(j)(4) limit. Accordingly, you are required to provide additional information as to Item B of your statement of corrective steps taken.

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

JUL 11 1980

Your implementation of the corrective action to be addressed in your response to this letter will be considered in determining whether any further enforcement action, such as modification, suspension or revocation of your license is appropriate.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,

"Original Signed By
R. C. DeYoung"

Victor Stello, Jr.
Director
Office of Inspection
and Enforcement

Enclosures:
Order Imposing Civil
Monetary Penalty

cc w/encs:
M. H. Voth, Manager, Nuclear Operations
W. G. Ruzicka, Reactor Project Engineer
C. Konnerth, Health Physicist
R. Bollinger, Vice President, Medical Products Division

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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

"Original Signed By
R. C. DeYoung"

Victor Stello, Jr.
Director
Office of Inspection
and Enforcement

Dated this 14th 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.