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RECORD #59

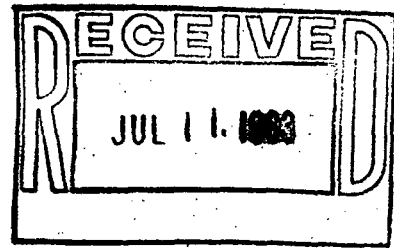
TITLE: Enforcement of License Conditions in Material Licenses

FICHE: 19249-293

0930/83



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



JUN 30 1983

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MEMORANDUM FOR: Herbert E. Book, Chief
Radiological Safety Branch, Region V

FROM: Jane A. Axelrad, Director
Enforcement Staff, IE

SUBJECT: ENFORCEMENT OF LICENSE CONDITIONS IN MATERIALS LICENSES

In a memorandum dated December 23, 1982 you informed your staff that licensees should not be cited for commitments in their license applications which are more restrictive than the minimally acceptable guidance in regulatory guides, provided the licensee is complying with that guidance. Richard E. Cunningham, in a March 14, 1983 memorandum to me, stated that licensees should be cited for not meeting the commitments made in applications even if they are more restrictive than the minimally acceptable practices specified in regulatory guides. Mr. Cunningham also indicated that licensees who desire relief from commitments made in applications should apply for license amendments.

IE agrees with Mr. Cunningham. IE shares the belief that commitments made by licensees in applications and incorporated as license conditions should be enforced, provided that meeting the commitments would not lead to an unsafe condition. Regulatory guides cannot and should not alter commitments made in license applications which have been incorporated into a license. Because of the large number of materials license applications, the licensing staff cannot negotiate over each license application to ensure that commitments are not more stringent than regulatory guides. However, as Mr. Cunningham pointed out, in some cases, more restrictive conditions are necessary to compensate for less restrictive conditions in other areas or for circumstances peculiar to a particular licensee. Thus, a licensee who wants relief from a license commitment should request a license amendment.

In view of the above, the Regions should follow the policy that licensees should be cited for not meeting their license conditions even if they are more restrictive than the minimally acceptable practices specified in regulatory guides.

Jane A. Axelrad
Jane A. Axelrad, Director
Enforcement Staff
Office of Inspection and Enforcement

Enclosure: Cunningham memo, 3/14/83

See next page for cc's.

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JUN 30 1983

Herbert E. Book

cc w/encl: J. Joyner, RI
A. Gibson, RII
J. Miller, RIII
G. Brown, RIV
D. Holody, RI
M. Puckett, RII
W. Schultz, RIII
T. Westerman, RIV
A. Johnson, RV
E. Flack, IE
L. Cobb, IE
K. Cyr, ELD
V. Miller, NMSS



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MAR 14 1983

MEMORANDUM FOR: Jane A. Axelrad, Acting Director of Enforcement
Office of Inspection and Enforcement

FROM: Richard E. Cunningham, Director
Division of Fuel Cycle and Material Safety

SUBJECT: DETERMINATION OF VIOLATIONS AT MATERIALS LICENSEES

In a memorandum dated November 24, 1982, Herbert E. Book, Region V, proposed to inform his staff that if licensees make commitments more restrictive than the minimally acceptable condition described in a regulatory guide, no citation will be issued if the licensee is complying with the minimally acceptable condition rather than the commitment in its application.

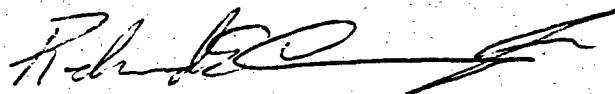
Regulatory guides have widespread distribution and applicants for licenses have the opportunity to reflect the minimally acceptable condition in an application. If an applicant chooses to impose upon itself a more restrictive condition than the minimally acceptable condition, we would expect compliance with the commitment made in the application.

For the vast majority of applications, the licensing staff makes no effort to impose conditions and requirements on licensees more restrictive than specified in guides. The voluntary commitments which may be more restrictive than the minimally acceptable are not brought to the attention of applicants. The large number of applications which must be reviewed precludes the staff from negotiating with applicants for the purpose of pointing out that commitments made in an application may be more restrictive than what otherwise would be acceptable.

There are, however, situations where more restrictive conditions than specified in the guide are necessary to compensate for less restrictive operations in other areas and for situations peculiar to a particular licensee. To distinguish between what is voluntary and what is necessary for health and safety, it would be necessary for the inspector to do a complete safety analysis of the application. This is impractical in most situations. We, therefore, believe that inspectors should ensure that licensees operate in accordance with license conditions and commitments made in applications if the licensing process is to maintain its integrity.

MAR 14 1983

We would appreciate your informing regional offices that licensees should be cited for not meeting the commitments made in applications which are more restrictive than the minimally acceptable situation specified in regulatory guides and that the licensee be informed that the remedy would be by means of a license amendment.



Richard E. Cunningham, Director
Division of Fuel Cycle and
Material Safety, NRCSS

Enclosure: Memo dated 11/24/82



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION V

1450 MARIA LANE, SUITE 210
WALNUT CREEK, CALIFORNIA 94596

November 24, 1982

MEMORANDUM FOR: G. S. Spencer, RV
A. D. Johnson, RV
R. D. Thomas, RV
Leo Higginbotham, IE:HQ
Vandy Miller, NMSS:HQ
J. Axelrad, IE:HQ
K. Cyr, ELD:HQ
J. Joyner, RI
A. Gibson, RII
J. Miller, RIII
G. Brown, RIV

FROM: H. E. Book, Chief
Radiological Safety-Branch, Region V

SUBJECT: DETERMINATION OF VIOLATIONS AT MATERIALS LICENSEES

I intend to issue the enclosed memorandum as guidance to the materials inspectors in Region V. I would appreciate your review and comment. Specifically:

1. Do you currently apply a similar procedure?
2. Would you consider utilization of this or something similar to achieve uniformity among the Regions?
3. Can you anticipate any significant problems if this approach is adopted?
4. Would it cause you any significant problems if Region V were to adopt this procedure?

Your assistance and comments in this matter will be appreciated.

H. E. Book

Herbert E. Book, Chief
Radiological Safety Branch

Enclosure:
Draft memo, same subject



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION V

1450 MARIA LANE, SUITE 210
WALNUT CREEK, CALIFORNIA 94596

December 23, 1982

MEMORANDUM FOR: All Members, Materials Radiation Protection Section
FROM: H. E. Book, Chief, Radiological Safety Branch
SUBJECT: DETERMINATION OF VIOLATIONS AT MATERIALS LICENSEES

The license application, letters, and procedures submitted with the application are frequently referenced in materials licenses in a specific license condition. In effect, this converts all statements in the procedures and letters into specific license conditions, and would seem to make them strict, enforceable NRC requirements. This can result in undesirable situations. For instance, an applicant may, in his procedures, say he will exchange film badges on a monthly basis. If those procedures are then specifically referenced in a license condition that would appear to become an NRC requirement on that licensee. On the other hand, NRC regulation 10 CFR Part 20 would permit quarterly exchanges. Which standard should apply? Or, an applicant may say he plans to limit exposure of his employees to 1000 mrem per quarter. If those procedures are referenced in a specific license condition, is he in violation if an employee received 1200 mrem in a quarter? Many similar situations have occurred or can be postulated.

In Region V, these situations have been handled in the past in the following way. If there is a clear and specific requirement in the regulations, and the licensee is in compliance with the regulations, we have considered the licensee to be in compliance with NRC requirements, regardless of any conflicting commitment in his procedures. Thus, if a licensee violates his own license referenced procedure on a matter specifically covered in the NRC regulations, but is meeting the requirement in the regulations on that point, no citation is issued. The only exception to this approach has been when it was obvious that there was actual intent in the licensing process to impose the different requirement. This approach has worked very well in the past, resulting in a more uniform, logical and fair application of NRC requirements. However, this approach has been limited to situations clearly covered by a specific requirement in the NRC regulations.

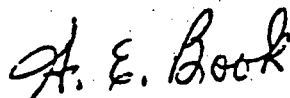
Over the past few years, the number of Regulatory Guides has greatly increased. While these Regulatory Guides certainly do not have the force of a regulation, each one includes a statement to the effect that the approaches described are acceptable to the NRC staff. Many of the Guides include very specific recommendations on such matters as frequency of calibrations, tests, audits, inventories, and the like. While these Regulatory Guides are available to licensees and applicants, very frequently the licensee's procedures will include commitments (calibration frequency for example) more strict than those described in a Regulatory Guide as "acceptable" to the NRC. If the licensee's procedures are specifically referenced in a license condition, he can be in violation of that license condition, but still within conditions described as "acceptable" in an official NRC document (Regulatory Guide). A specific example might be a medical licensee who in his license referenced procedures says he will calibrate his portable instruments at 6 month intervals. The NRC Regulatory Guide for Medical Programs (10.8) states that annual calibrations are acceptable. If the licensee calibrates his instruments

annually, he can be in violation of this license condition. His colleagues across the street may be calibrating their instruments annually and be in total compliance with NRC requirements, if they stated the annual frequency in their procedures. This is not good regulation. This is not fair regulation. This, in many cases, results in overly strict regulation.

Effective immediately, Region V inspectors in the Radiological Safety Branch, Materials Radiation Protection Section, will utilize the following procedure. If there is a Regulatory Guide specific to the type of licensee being inspected, and the specific requirements in the Guide, are less restrictive than the licensee's procedures, no citation will be issued if the licensee meets the requirements of the Regulatory Guide. It would be appropriate for the inspector to call the discrepancy to the licensee's attention and to suggest that at the time of the next license amendment or renewal he bring his procedures into line with the Regulatory Guide.

This approach must not be used to give regulation status to Regulatory Guides, and must not be construed to mean that other statements in regulatory guides are NRC requirements. This procedure is to be applied only in situations where the licensee's referenced procedures are more strict than the Regulatory Guide, he is not meeting the requirements of his procedures, but he is meeting the "acceptable" recommendations in the Regulatory Guide. Thus, in all cases where it is utilized, it will mean a relaxation of requirements on the licensee. It will certainly result in a more uniform and fair application of NRC requirements in the inspection and enforcement process.

This approach should not be used if there is any indication that there was actual intent in the licensing process to require the stricter standards referenced in the license condition. Any questions or doubtful cases should be discussed with me before the Notice of Violation is drafted.



H. E. Book, Chief
Radiological Safety Branch

cc:

G. S. Spencer
A. D. Johnson
F. A. Wenslawski
K. Cyr, ELD:HQ
J. Joyner, RI
A. Gibson, RII
J. Miller, RIII
G. Brown, RIV