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RECORD #26

TITLE: Enforcement Pertaining to Unauthorized Users and
Unauthorized Materials

FICHE: 03928-356



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

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Phil Storr

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MEMORANDUM FOR: Gary Snyder, Region I
 Charles Upright, Region II
 Charles Morelius, Region III
 Walter Vetter, Region IV
 Allen Johnson, Region V

FROM: Dudley Thompson, Director
 Enforcement and Investigations, IC

SUBJECT: ENFORCEMENT PERTAINING TO UNAUTHORIZED USERS AND UNAUTHORIZED MATERIALS - INTERIM GUIDANCE ON 45 FR 66754

Supplement VII of the new enforcement policy establishes the conduct of licensed activities by a technically unqualified or unauthorized person as a Severity III Violation, a violation that normally results in a civil penalty on the first offense. The use of materials not on the license would also warrant a penalty under the criteria.

The routine inspection program discloses many cases of unauthorized or unqualified users or unauthorized materials not included in the license in medical programs and in small industrial licenses such as users of certain gauges and gas chromatographs. In many of these cases a civil penalty is not appropriate when, in reality, the individuals are appropriately qualified to use the materials.

In the interim, the enforcement guidance for medical and small industrial licenses is as follows. The inspector will request the licensee to explain whether or not the current unauthorized user(s) is qualified. If the licensee or inspector and his/her supervisor determine that the user(s) is not qualified, then a Severity III Violation will exist and a civil penalty or order should be processed.

If the licensee concludes that the user(s) is qualified and the inspector and his/her supervisor reach the same conclusion, the violation will be categorized as a Severity IV and handled with a Regional Notice of Violation (NOV). In addition, an Immediate Action Letter (IAL) will be issued requiring the licensee to promptly request a license amendment to resolve the problem of unauthorized user or unauthorized materials for which the person is qualified to use. Should the NRC subsequently determine that the user(s) (depending on the type of licensed program) is not qualified, the NOV will be rescinded and an appropriate enforcement package prepared.

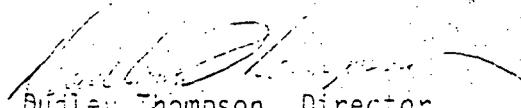
(could be part of NOV correspondence if can get NOV out right away.)

Multiple Addressees

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In such cases an order suspending the license until an authorized, qualified user(s) is obtained or materials for which the user is qualified is placed on the license may be more appropriate than civil penalties. A suspension or a modification order appears to be more appropriate in those cases where more hazardous materials are used, since a civil penalty may not ensure that unknowledgable users immediately desist from operations. For example, this action would be more important for users in medical programs than, for example, users of gas chromatographs or licensed gauges where the radiation hazards are minimal. In addition, unqualified users of materials where radiation hazards are minimal, such as the use of gas chromatographs, stationary liquid level or thickness measuring gauges, or users of other material that present minimal radiation hazards, should be the subject of an IAL "suspending" the user until he becomes qualified or another qualified user found. If the IAL is ineffective, an order suspending the user would be appropriate. Generally, these kinds of radioactive materials are inspected only for cause, except initially, since they fall into priorities VI or VII.

Because such cases will most likely be different, the regional offices should consult with appropriate cognizant individuals in EI:HQ.



Dudley Thompson, Director
 Enforcement and Investigations
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cc: J. Lieberman, ELD
 H. Thornburg, IE

cc to EAMS Branch
 to C. Banks, Policy File - Enforcement
 to Branch File
 Discuss in Branch mtg.