

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

San Juan Cement Company, Inc.
San Juan, Puerto Rico

Docket No. 030-31302
License No. 52-25066-01
EA 90-016

During the Nuclear Regulatory Commission (NRC) inspection conducted on January 9 and 12, 1990, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (1989), the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (ACT), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. License Condition 9.A authorizes the licensee to possess and use byproduct material in Ohmart Corporation devices.

License Condition 11.A requires that licensed material be used by, or under the supervision of, Felipe Santiago or individuals who have been trained by Ohmart.

Contrary to the above, as of January 9, 1990, Mr. Felipe Santiago had not been supervising activities involving licensed material, did not know that the company had an NRC license naming him as responsible individual, and did not know that licensed material was on site. No other licensee employee or any individual trained by Ohmart was supervising activities involving licensed material, and the material was unpacked and unattended on the construction site.

- B. 10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured from unauthorized removal from the place of storage.

Contrary to the above, for approximately one week prior to January 9, 1990, licensed material consisting of 3.025 curies of cesium-137 was unsecured and readily accessible to anyone on the facility's construction site.

- C. 10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited so that an individual who was continuously present in the area could not receive a dose in excess of 2 millirems in any one hour or 100 millirems in any seven consecutive days.

Contrary to the above, on January 9 and 12, 1990, radiation levels existed, in an unrestricted area at the construction site where the licensee's nuclear gauges were located, such that an individual who was continuously present could have received a dose in excess of 2 millirems in any one hour or 100 millirems in any seven consecutive days. Specifically, the radiation levels measured in the unrestricted area on both dates were approximately 3 millirems per hour.

- D. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the regulations in 10 CFR 20, and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, as of January 9, 1990, surveys were not made to assure compliance with 10 CFR 20.105(b) which limits radiation levels in unrestricted areas. Specifically, no radiation survey meter was available onsite, and the licensee had not made, nor caused to be made surveys in the unrestricted area surrounding the location of the nuclear gauges to determine whether radiation hazards were present.

- E. 10 CFR 19.11(a) and (b) require, in part, that current copies of Part 19, Part 20, the license and operating procedures be posted, or that a notice describing those documents and where they may be examined, be posted. 10 CFR 19.11(c) requires that Form NRC-3, "Notice to Employees," be posted.

Contrary to the above, on January 9 and 12, 1990, neither any of the above required documents nor the notice were posted.

These violations have been categorized in the aggregate as a Severity Level III problem (Supplements IV and VI).

Cumulative civil penalty - \$750 (assessed equally among the five violations).

Pursuant to the provisions of 10 CFR 2.201, San Juan Cement Company, Inc., (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) admission or denial of the violation, (2) the reasons for the violation if admitted, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps which will be taken to avoid further violations, and (5) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order may be issued to show cause why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, or money order payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest

Notice of Violation

- 3 -

imposition of the civil penalty in whole or in part by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section V.B of 10 CFR Part 2, Appendix C (1989), should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201 but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay the penalty due, which has been subsequently determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses to the Director, Office of Enforcement, noted above (Reply to a Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By
J. L. Milhoan

Stewart D. Ebrieter
Regional Administrator

Dated at Atlanta, Georgia
this 28th day of March 1990