



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

MAY 7 1993

Docket No. 030-30082
License No. 49-26888-01
EA 93-033

N.V. Enterprises
ATTN: Wayne E. Nelson
Radiation Safety Officer
1711 E. 24th Street
Casper, Wyoming 82601

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$4,000 - AND DEMAND FOR INFORMATION (NRC INSPECTION REPORT NO.
030-30082/91-01 & INVESTIGATION CASE NO. 4-91-017)

This is in reference to the inspection conducted on October 22, 1991, at N.V. Enterprises in Casper, Wyoming. This inspection, which was documented in a report issued December 4, 1991, found one violation of NRC requirements, the failure to wear alarm ratemeters during the performance of industrial radiography. In a letter dated March 31, 1993, the NRC informed you that the circumstances surrounding this violation had been reviewed by the NRC's Office of Investigations (OI) to determine whether the violation was committed willfully. OI's investigation concluded that the violation was deliberate, i.e., the owner of the company at the time of the violation remained in noncompliance from approximately October 10, 1991, when he was informed of the requirement, until October 22, 1991, the date of the NRC's inspection. On April 13, 1993, N.V. Enterprises representatives participated telephonically in an enforcement conference with NRC representatives to discuss this violation. A list of enforcement conference participants is enclosed.

Since January 10, 1991, the NRC has required in 10 CFR 34.33(a) that alarm ratemeters be worn by radiography personnel at all times during radiographic operations. This requirement, which calls for the use of alarm ratemeters that will emit an audible alarm in high radiation fields, was developed to prevent inadvertent and unnecessary exposure to high radiation levels and was based on the NRC's conclusion that most radiation incidents involving radiography activities would be prevented by the use of such devices. Based on the information developed during the inspection and investigation, and the discussions that took place during the enforcement conference, N.V. Enterprises was in violation of this important requirement from January 10, 1991, until the date of the inspection in October 1991.

Although N.V. Enterprises may have been confused about the effective date of the requirement prior to October 10, 1991, the inspection and investigation revealed that you (who at the time were employed by N.V. Enterprises as a radiographer and were not the radiation safety officer) had become aware from

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N.V. Enterprises

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an equipment vendor that the radiation monitoring devices N.V. Enterprises was using did not meet NRC requirements because they were not set to alarm in a 500 millirem/hour radiation field. Although you obtained an alarm ratemeter for your own use and informed the owner of the company (Neal Cox) that the devices being used did not meet current NRC requirements and that he would have to call the equipment vendor to make arrangements to receive an alarm ratemeter, he continued to perform radiography without an alarm ratemeter on four occasions before the violation was discovered during the NRC inspection.

In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, the failure to wear alarm ratemeters during radiography operations is normally categorized as a Severity Level III violation. However, because N.V. Enterprises was aware of the requirement and did not cease operations, this violation has been categorized as willful, and at Severity Level II. The NRC notes that N.V. Enterprises states that its personnel were wearing, and are continuing to wear, devices that emit a constant audible chirp in a radiation field, the frequency of which is dependent on the intensity of the radiation field. However, these devices do not satisfy the requirements of 10 CFR 34.33(a).

The NRC also recognizes that N.V. Enterprises took immediate actions to come into compliance with this requirement following the inspection. You agreed to suspend radiographic operations following the inspection and did not resume radiographic operations until you obtained alarm ratemeters. During the enforcement conference, you described additional corrective actions that you took immediately following the inspection, including: 1) a complete review of your operating procedures to ensure they reflected current requirements; 2) revisions to your operating procedures to reflect alarm ratemeter requirements; 3) a complete review of all personnel monitoring equipment to ensure proper calibration and performance; and 4) a complete review of applicable NRC regulations to ensure that you were in compliance with all other NRC requirements. An NRC inspection in February 1993 confirmed that N.V. Enterprises has been complying with the alarm ratemeter requirement and other NRC requirements.

To emphasize the importance of taking immediate action upon discovering a violation to restore compliance with NRC requirements, and the importance of maintaining an awareness of all NRC requirements, particularly those that are designed to ensure the safety of radiography personnel and the public, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$4,000 for the Severity Level II violation described above and in the Notice.

The base value of a civil penalty for a Severity Level II violation is \$8,000. The civil penalty adjustment factors in the Enforcement Policy were considered and resulted in a \$4,000 net reduction. In making this decision, the NRC determined: 1) that a 50-percent decrease was warranted for your corrective actions; 2) that a 100-percent decrease was warranted based on your good past performance; and 3) that a 100-percent increase was warranted because the

violation occurred on multiple occasions between January 10 and October 22, 1991. The remaining adjustment factors were considered but did not result in any further adjustments to the penalty.

As an owner of the business and a radiographer, Mr. Cox continues to be involved in decisions that have the potential to affect the safety of employees and the public. Therefore, in light of the willful violation and in order to determine whether additional regulatory action is needed, N.V. Enterprises is hereby required, pursuant to sections 161c, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 30.32(b), to provide in writing, under oath or affirmation within 30 days of the date of this letter, a statement of why the NRC should have confidence that he will take prompt action to comply when he learns of new requirements in the future.

N.V. Enterprises is required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing its response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions, and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,


James L. Milhoan
Regional Administrator

Enclosure:
Notice of Violation and Proposed Imposition
of Civil Penalty

cc: Howard Hutchings, Manager
Environmental Health Program
Cheyenne, Wyoming

MAY - 7 1993

N.V. Enterprises

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