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

OCT 29 1990

Docket No. 30-29019
License No. 49-26808-01
EA 90-104

High Mountain Inspection Service, Inc.
ATTN: Bill Fraser, President
Post Office Box 656
Mills, Wyoming 82644

Gentlemen:

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$2,500

This is in reference to High Mountain Inspection Service's two letters dated August 22, 1990, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by letter dated July 23, 1990. Our letter and Notice described several violations identified as a result of NRC inspections conducted on April 18, 1990, and May 9-10, 1990.

To emphasize the importance of the requirement to perform confirmatory radiation surveys and the importance of strict adherence to NRC's radiation safety requirements, a civil penalty of \$2,500 was proposed.

In your response, you admitted the three violations that formed the basis for the proposed civil penalty and denied one violation among those not assessed a civil penalty. However, you protested the imposition of the civil penalty because, as you argued in your letters, the violations that led to the penalty were the direct result of independent actions of individuals. Therefore, you contended that you should not be subject to a fine for actions beyond your reasonable control. Your letters implied that deficiencies in NRC's regulatory and enforcement programs and application of these programs contributed to your inability to ensure that individual employees abided by radiation safety requirements. This suggestion appears to reflect a lack of understanding of the responsibilities inherent in possessing an NRC license for radioactive materials.

Compliance with NRC regulations and safety standards is first and foremost the responsibility of the licensed entity. This is true for all NRC licensees. In assigning individuals to serve as radiographers, licensees select a person who, by the definition in 10 CFR 34.2, is responsible to the licensee for assuring that Commission requirements are met, for a corporation can only act through its employees or agents. Thus, you must ensure through whatever processes you consider necessary that licensed activities are conducted in compliance with NRC requirements. The Commission held in the Atlantic Research Corporation case, CLI-80-7, 11 NRC 413 (1980), that civil penalties are an appropriate sanction to emphasize to a licensee, including management and employees, the need for strict compliance with NRC requirements which are designed to protect the public health and safety.

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In regard to your contention that the violations do not warrant a civil penalty, we reiterate our position that a failure to survey a radiography device to ensure that the radioactive source has returned to a shielded position is a serious violation. These surveys are effective in preventing accidental exposures of radiographers and others. Previous incidents, including your own experiences in the state of California, have shown that failures to survey can and have led to significant radiation exposures to individuals.

After consideration of your response, we have concluded for the reasons discussed briefly here and in more detail in the appendix attached to the enclosed Order Imposing Civil Monetary Penalty that the violations occurred as stated and that the corresponding civil penalty is appropriate. Accordingly, we hereby serve the enclosed Order on High Mountain Inspection Service, Inc. imposing a civil monetary penalty in the amount of \$2,500 to emphasize the importance of assuring that its employees comply with requirements. We will review the effectiveness of your corrective actions during a subsequent inspection.

If, after considering the points made in this letter and the Appendix to the Order, you have any questions or doubts about the responsibility that you have as a licensee, please contact Mr. A. B. Beach of the Region IV staff in order that we can address them.

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

Sincerely,



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Enclosures: As Stated

cc:

Sen. Alan K. Simpson
NRC Public Document Room
State of Wyoming Radiation Control Program Director
State of California Radiation Control Program Director