

MAY 10 1982

MEMORANDUM FOR: James Lieberman, Acting Director, Enforcement and Investigation Staff, IE:HQ *30-1048*
FROM: John T. Collins, Regional Administrator, RIV
SUBJECT: NUCLEAR ENERGY SERVICES, INC., CONAM INSPECTION DIVISION - CIVIL PENALTY

The Region IV staff has reviewed the licensee's response dated April 16, 1982.

The licensee has requested partial mitigation of the proposed civil penalty. Based on our review, we recommend that there be no change in the civil penalty.

Attached is a draft of the letter and order imposing the civil penalty.

John T. Collins
Regional Administrator

Attachment: As stated

MRPS *MS*
MShopenn/de
4/29/82

MRPS *JE*
JEverett
5/4/82

TPB *GB*
GBrown
5/4/82

DIES *EM*
EJohnson
5/10/82

RA *JC*
JCollins
4/10/82

IE-07

License: 42-16559-01
EA 82-27

Nuclear Energy Services, Inc.
Conam Inspection Division
ATTN: Mr. Boyd Creech
President
6106 Rookin Street
Houston, TX 77074

Gentlemen:

This refers to your letter of April 14, 1982, in response to the Notice of Violation and Proposed Imposition of Civil Penalties sent to you with our letter of March 16, 1982. Our letter concerned violations found during the investigation conducted by Region I personnel intermittently during the period October 15 to November 3, 1981, and to the Region I inspection conducted intermittently during the period July 23 to October 15, 1981, at the Folcroft, Pennsylvania, site of activities authorized by NRC License 42-16559-01.

After careful consideration of your responses, we have concluded for the reasons given in the enclosed Order that the violations, for which civil penalties have been proposed, occurred as set out in the Notice of Violation and Proposed Imposition of Civil Penalties. Based on our analysis of your response to Violations 1A, 1B, and 1C, the penalty remains as originally imposed in the cumulative amount of Nine Thousand Dollars.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosed will be placed in the NRC's Public Document Room.

Sincerely,

R. C. DeYoung, Director
Office of Inspection and Enforcement

Enclosure:
Order Imposing Civil Monetary Penalties

MRP *MS*
MShopenn/de
4/29/82

MRPS *AE*
JEvenett
5/5/82

TPB *Jo*
GDBrown
5/5/82

DIES *SKT*
EJohnson
5/10/82

RA *JK*
Collins
5/10/82

~~RIV Official File Copy~~

U. S. NUCLEAR REGULATORY COMMISSION

In the Matter of

Nuclear Energy Services, Inc.
Conam Inspection Division
6106 Rookin Street
Houston, TX 77074

License: 42-16559-01
EA 82-27

ORDER IMPOSING CIVIL MONETARY PENALTIES

I

Nuclear Energy Services, Inc., Conam Inspection Division, 6106 Rookin Street, Houston, Texas, (the "licensee") is the holder of License 42-16559-01 (the "license") issued by the Nuclear Regulatory Commission (the "Commission"). License 42-16559-01 authorizes the use of sealed sources of byproduct material.

II

An investigation of the licensee's activities under the license was conducted intermittently during the period October 15 to November 3, 1981, as well as an inspection conducted intermittently during the period July 23 to October 15, 1981, at the licensee's facility located in Folcroft, Pennsylvania. As a result of the investigation and inspection, it appears that the licensee had not conducted its activities in full compliance with the conditions of its license and with the requirements of NRC regulations. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated March 16, 1982. This Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission regulations and license conditions which the licensee had violated, and the amount of civil penalties proposed for each violation. An answer dated April 14, 1982, to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

Upon consideration of the answers received and the statements of fact, explanation, and argument for mitigation or cancellation contained therein, as set forth in the enclosure to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, P.L. 96-295) and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The licensee pay civil penalties in the total amount of Nine Thousand Dollars within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States, and mailed to the Director of the Office of Inspection and Enforcement.

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceeding and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

V

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the licensee violated NRC regulations and license conditions as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, as amended by this Order; and,
- (b) whether, on the basis of such violations, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

R. C. DeYoung, Director
Office of Inspection and Enforcement

Dated at Bethesda, Maryland
this day of

APPENDIX

EVALUATIONS AND CONCLUSIONS

For each violation and associated civil penalty identified in the Notice of Violation (dated March 16, 1982) the original violation is restated and the Office of Inspection and Enforcement evaluation and conclusion regarding the licensee's response (dated April 14, 1982) to each item is presented.

Item 1A

Statement of Violation

10 CFR 34.31(a) requires that radiographers be trained in specified subjects and demonstrate an understanding of these subjects as well as competence in the use of radiography equipment.

Contrary to the above, the licensee permitted an individual without the required training, and prior to a demonstration of competence in the use of radiography equipment, to perform radiography at a field site in Mahwah, New Jersey, on July 25, 1980.

This is a Severity Level III violation (Supplement VII).
(Civil Penalty \$5,000)

Evaluation and Conclusion

The licensee admits that an individual without the required training, and prior to a demonstration of competence in the use of radiography equipment, was permitted to perform radiography at a field site in Mahwah, New Jersey, on July 25, 1980. The licensee requested mitigation of proposed civil penalty on the following grounds:

1. Conam's own investigation did not establish prior knowledge by the Folcroft manager about the violation.
2. Conam's president and the individual to whom he reports cannot recall, in the 15 years they have been with the Company, a single incident where the management of Conam has been accused of coaching an employee to cover up an incident, withholding information from the Commission, discouraging employees from contacting the Commission, backdating records, or otherwise being anything but honest with the Commission.

Violations by a licensee's employee, when the employee is acting within the scope of his employment and furthering the employer's interest, are chargeable to the licensee himself. It is the responsibility of the licensee management to assure that employees comply with the

Commission requirements. In the case in question, the results of the investigations and inspections indicate that the violation occurred with the knowledge of the Folcroft manager. Consequently, the licensee's response above and response to Item 1A provide insufficient basis for mitigation of the proposed penalty. Accordingly, the Civil Penalty remains at Five Thousand Dollars.

Item B

Statement of Violation

10 CFR 34.22(a) requires, in part, that during radiographic operations the sealed source assembly be secured in the shielded position each time the source is returned to that position. 10 CFR 34.43(b) requires that a physical radiation survey be made after each radiographic exposure to determine that the sealed source has been returned to its shielded position.

Contrary to the above, on June 9, 1981, the sealed source assembly had not been secured in the shielded position nor had a physical radiation survey been made to determine that the source had been returned to its shielded position after a radiographic exposure. This contributed to a radiographer's receiving a radiation dose of about one rem.

This is a Severity Level III violation (Supplement IV).
(Civil Penalty \$2,000)

Evaluation and Conclusion

The licensee admits that on June 9, 1981, the sealed source assembly had not been secured in the shielded position nor had a physical radiation survey been made to determine that the source had been returned to its shielded position after a radiographic exposure. This contributed to a radiographer's receiving a radiation dose of about one rem. The licensee requested remission of the Civil Penalty on the following grounds:

Fines should not be assessed because historically the Commission has not assessed a penalty with respect to licensee identified and documented incidents not resulting in overexposures.

The licensee's statement is not in accordance with the NRC's Interim Enforcement policy on licensee identified violations as follows:

NRC will not generally issue notices of violation for a violation that meets all of the four following tests:

- (1) It was identified by the licensee.
- (2) It fits in Severity Level V or VI.
- (3) It was reported, if required.
- (4) It was or will be corrected within a reasonable time.

The violation in question was a Severity Level III violation. Additionally, the Enforcement Policy allows a 50 percent reduction in civil penalty if the licensee identifies, corrects, and (when required) reports a violation in a timely manner. The 50 percent reduction has already been considered and awarded since the full amount would have been \$4,000.

Consequently, the licensee's response above provides insufficient basis for mitigation of the proposed penalty. Accordingly, the Civil Penalty remains at Two Thousand Dollars.

Item 1C

Statement of Violation

10 CFR 34.41 requires, in part, that during each radiographic operation, the radiographer or radiographer's assistant maintains direct surveillance of the operation to protect against unauthorized entry into a high radiation area.

Contrary to the above, the licensee failed to maintain direct surveillance over a radiographic operation on October 4, 1980, at a field site in Ridgewood, New Jersey, and allowed a member of the general public to enter a high radiation area.

This is a Severity Level III violation (Supplement VII).
(Civil Penalty \$2,000)

Evaluation and Conclusion

The licensee admits that they failed to maintain direct surveillance over a radiographic operation on October 14, 1980, at a field site in Ridgewood, New Jersey, and allowed a member of the public to enter a high radiation area. The licensee requested remission of proposed civil penalty on the same grounds as stated in Item 1B. Consequently, the licensee's response provides the same insufficient basis for remission of the proposed penalty. Accordingly, the Civil Penalty remains at Two Thousand Dollars.