

D98



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

FEB 22 1994

Docket No. 030-06695
License No. 47-11883-01
EA 93-205

Nondestructive Inspection
Service, Inc.
ATTN: H. M. Hauldren
President
Post Office Box 220
Hurricane, West Virginia 25526

Gentlemen:

SUBJECT: EVALUATION OF LICENSEE RESPONSE TO NRC NOTICE OF
VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY

This refers to your letter dated September 22, 1993, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated September 1, 1993. Our letter and Notice described violations identified during inspections conducted on July 27, 1993, at a temporary radiography work site at the Rhone Poulenc facility in Institute, West Virginia and subsequent follow-up at your facility in Hurricane, West Virginia.

In its September 22, 1993 response, Nondestructive Inspection Service, Inc. (Licensee) did not deny the violation regarding the failure to perform adequate surveys following each exposure during radiographic operations on July 27, 1993, but requested that the severity of the penalty proposed for this violation be reconsidered in view of its corrective actions, its good prior performance, and the depressed economy.

The NRC agrees that the Licensee took prompt and extensive corrective action following the identification of the violation. The NRC evaluated the Licensee's corrective actions prior to issuing the proposed civil penalty and based on that evaluation mitigated the proposed civil penalty by 50 percent. This is the maximum mitigation allowed by the NRC Enforcement Policy for the corrective action factor. However, this was offset by the fact that the violation was identified by the NRC, which resulted in an escalation of the proposed civil penalty by 50 percent.

The staff reexamined the Licensee's prior performance record and noted that during the last two inspections conducted in 1991 and 1992, one NRC-identified violation concerning an improper storage of an exposure device and two Licensee-identified non-cited violations were identified. In issuing the proposed civil

9402240022 940222
PDR ADOCK 03006695
C PDR

JE14/10

penalty, the NRC proposed no mitigation based on the Licensee's prior performance. However, based on a reevaluation of the Licensee's performance as indicated by these inspections, the NRC has decided that mitigation of 100 percent of the civil penalty is warranted based upon the Licensee's prior performance.

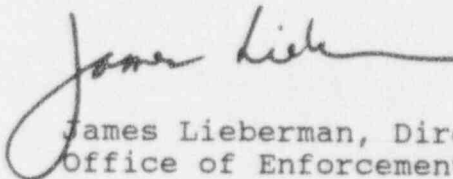
With respect to the request for mitigation on the basis of the depressed economy surrounding the industry, the NRC Enforcement Policy does not specifically allow mitigating a civil penalty based on the current state of the economy. The NRC expects licensees, even during depressed times, to have sufficient resources to safely conduct licensed activities and pay license and inspection fees. The Enforcement Policy provides that normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, rather than reducing the amount of the civil penalty, and that the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees. In this case, the Licensee has not submitted specific evidence of financial hardship. This need not be further considered in light of the mitigation discussed above.

Therefore, on balance, we have concluded that the civil penalty should be mitigated by 100 percent based on the licensee's good prior performance. Accordingly, the proposed civil penalty on Nondestructive Inspection Service, Inc. is mitigated in its entirety. We will review the effectiveness of your corrective actions during a subsequent inspection.

Region II responded in separate correspondence dated February 9, 1994, to the issues raised in your September 22, 1993 letter concerning the inspectors' actions during the inspection.

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

Sincerely,



James Lieberman, Director
Office of Enforcement

cc w/encl:
State of West Virginia

Nondestructive Inspection
Service, Inc.

DISTRIBUTION:

PDR
SECY
CA
JMTaylor, EDO
HThompson, DEDS
SEbnetter, RII
RBernero, NMSS
CPaperiello, NMSS
LChandler, OGC
JLieberman, OE
PSantiago, OE
JGoldberg, OGC
Enforcement Coordinators
RI, RII, RIII, RIV, RV
FIngram, OPA
DWilliams, OIG
BHayes, OI
RBangart, OSP
EJordan, AEOD
LTremper, OC
NMamish, OE
EA File
DCS

OE	AD:QE <i>JAS</i>	DD:OE	RA:RII <i>Hayes</i>
NMamish	PSantiago	JGray	SEbnetter <i>John</i>
2/ /94	2/18/94	2/ /94	2/18/94

OGC <i>NLO</i>	OE:O <i>J</i>
JGoldberg	JLieberman
2/18/94 <i>by [signature]</i>	2/18/94

Doc Name: G:\OECASES\93205LET.NM