

KCE STRUCTURAL ENGINEERS, P.C.

CONSULTING ENGINEERS • 1818 JEFFERSON PLACE, N.W. • WASHINGTON, D.C. 20036 • 202-833-8622

February 18, 1994

CERTIFIED MAIL

Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attn: Document Control Desk

Re: KCE Structural Engineers, PC
REPLY TO A NOTICE OF VIOLATION
Notice of Violation & Proposed Imposition of
Civil Penalty - \$375
Special NRC Inspection No. 030-33019/93-002

Gentlemen:

We are in receipt of a letter from Mr. Thomas T. Martin, Regional Administrator for the Nuclear Regulatory Commission, Region I, notice of violation and we wish to respond.

For ease of reference we have reiterated the statements of our violation in ***bold italic font***. Please find our previous response of January 26, 1994 (Full copy enclosed) and then our "corrective steps":

LETTER OF 2/4/94 FROM NRC REGION I

Page Two, paragraph four:

"The base civil penalty was mitigated by 25% because of your identification of the violation (Full 50% mitigation on this factor was not warranted since the identification of the fact that the gauge was missing was self-disclosing when you went to use the gauge). No mitigation was provided for your corrective actions because although you did arrange for transfer of the gauge to an authorized user, you have not yet arranged for staff to attend training on the use of the gauge, and have not submitted to the NRC a license amendment listing a qualified authorized user."

KCE'S RESPONSE:

In fact, we did not discover the device missing when we went to use it. We found it missing when our personnel returned to his truck. Further our staff arranged (see enclosed letter from Troxler) to attend the authorized training course and we had prepared the paperwork to modify the qualified, authorized user. We withheld action on this with the knowledge of NRC until the hearing recently held. We therefore feel we are entitled to the full 50% mitigation.



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PDR ADOCK 03033019
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PROFESSIONAL REGISTRATIONS - COLORADO, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, GEORGIA, ILLINOIS, LOUISIANA, MARYLAND, MASSACHUSETTS, MISSOURI, N.C.E.E., NEW JERSEY, NEW YORK, NORTH CAROLINA, OHIO, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, TENNESSEE, VIRGINIA, WEST VIRGINIA, WISCONSIN

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ENCLOSURE 1 - NOTICE OF VIOLATION AND PROPOSED
IMPOSITION OF CIVIL PENALTY

I. Violation of the Security Requirement

"10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under constant surveillance and immediate control of the licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials."

KCE'S RESPONSE:

Our response is that the licensed materials was at all times either under our constant surveillance or was in a secured place of storage.

During Mr. Rouco's transport of the licensed material, the vehicle in which he carried the licensed material was locked. See photographs (Exhibit B attached.)

The pick-up truck, in fact is not a flat bed truck, but a Toyota 89 pick-up, with integral bed enclosure, model P-G2, license #ZXP8867, and serial number JT4RN93SOK5007160 with a factory installed welded enclosed body manufactured by Leer for Toyota. The only entry to this area is via a double locked space, steel lock with 3/8" forged steel turn lock, one each side, and a pull handle lock at the center.

The rear door of the vehicle was forced open, bending the two steel tongues and then the pull handle pulled down. NRC's inspector observed the locking mechanism after the forced entry and before repair. In the hearing the writer advised he could pull the door open without tools after it was vandalized and before it was repaired.

KCE'S CORRECTIVE ACTION

We are taking steps as described in your summary of what we proposed at our hearing, and are having additional locks placed on the transporting vehicle and anchors welded to the frame for a chained padlock with the windows tinted.

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ENCLOSURE 1 - NOTICE OF VIOLATION AND PROPOSED
IMPOSITION OF CIVIL PENALTY

Page Two. item II.

II. Other Violations of NRC Requirements

"A. *Condition 11.A of License No. 08-30006-01 requires, in part, that licensed material shall be used by, or under the supervision and in the physical presence of James C. Johnson, or individuals who have successfully completed the manufacturer's training program for gauge users.*

KCE'S RESPONSE:

We awaited sending our personnel (but registered them) to the Troxler course pending the outcome of the hearing. We now are deciding if we wish to continue with the device or appropriately selling it.

KCE CORRECTIVE STEP

See our response above.

"B. *Conditions 11.B of License No. 08-30006-01 identifies James C. Johnson as the Radiation Safety Officer for the license.*"

KCE'S RESPONSE:

In fact, our Radiation Safety Officer originally was Mr. Chris Johnson. Mr. Johnson, unexpectedly left KCE at the end of August 1993. Prior to this departure, the writer was informed that, among other things, all necessary information and documents had been forwarded relative to, among other things, the portable nuclear density testing device and that, the notation on our original application of the writer as an additional member of our firm, to be "in charge" precluded having to write to assign a new Radiation Safety Officer. The writer, immediately upon notification, on November 22, 1993 that this was not the case, followed the procedure as noted in the attachments enclosed with our earlier correspondence.

KCE'S CORRECTIVE STEP:

KCE, after the completion of the certified course, will have a new radiation safety officer identified to NRC.

"C. Condition 13.A of License No. 08-30006-01 requires that sealed sources be tested for leakage at intervals not to exceed six months or at such other intervals as are specified by the certificate of registration referred to in 10 CFR 32.210, not to exceed 3 years."

KCE'S RESPONSE:

A leak test was performed on March 10, 1993. The writer was told by Mr. Johnson (previous Radiation Safety Officer) prior to his departure, that a leak test was performed in August 1993, by Mr. Chris Johnson, but we cannot locate the record of those results. We have had a leak test performed on December 6, 1993.

KCE'S CORRECTIVE STEP:

We had a leak test performed on December 8, 1993 as you have been advised on numerous occasions and we will, when and if we have the device in our possession have the leak tests performed as required.

ENCLOSURE 1 - NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY

Page Three. Item II. Other Violations of NRC Requirements

- "D. 10 CFR 71.5(a) requires that licensees who transport licensed material outside the confines of their plants or who deliver licensed material to a carrier for transport shall comply with the applicable requirements of the regulatory appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Part 170-189.
1. 49 CFR 177.817(e) requires, in part, that the driver of a motor vehicle containing hazardous material, and each carrier using such materials ensure that the shipping paper is readily available to, and recognizable by, authorities in the event of accident or inspection. Specifically, (i) when the driver is at the vehicle's controls, the shipping paper shall be: (A) within his immediate reach while he is restrained by the lap belt; and (B) either readily visible to a person entering the driver's compartment or in a holder which is mounted to the inside of the door on the driver's side of the vehicle; (ii) when the driver is not at the vehicle's controls, the shipping paper shall be: (A) in a holder which is mounted to the side of the door on the driver's side of the vehicle; or (B) on the driver's seat in the vehicle.

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Pursuant to 49 CFR 172.101, radioactive material is classified as a hazardous material.

KCE'S RESPONSE:

Shipping papers were enclosed in the licensed material shipping container in a sealed envelope noting the material, quantity and listing emergency telephone numbers. (Note, the licensed material, when stolen, was located by KCE some 18 hours after its theft, prior to the container being opened by the Hazardous Material Personnel and/or NRC. We advised the hearing board of this and provided them copies of those papers.

KCE'S CORRECTIVE STEP:

None required, please see our response above.

"2. '9 CFR 173.448(a) requires that each shipment of radioactive material
all be secured in order to prevent shifting during normal
transportation conditions.

KCE'S RESPONSE:

In fact, the device was adequately secured for shipping.

The material was in a double (actually triple) locked truck, in a padlocked container with the device further padlocked.

The carrying case was blocked in the bed, when in transit in the truck body with a bladed shovel and handle in one direction, and a steel bar, blocking the device to the body of the truck on one side and the rear door on the other.

We awaited sending our personnel (but registered them) to the Troxler course pending the outcome of the hearing. We now are deciding if we wish to continue with the device or appropriately selling it.

KCE'S CORRECTIVE STEP

We are taking steps as described in your summary of hearing to us, and have additional locks placed on the vehicle with anchors welded to the frame for a chained padlock and the windows tinted.

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Page Four. Item II. Other Violations of NRC Requirements

"E. 10 CFR 20.401(a) requires that each licensee maintain records showing radiation exposures on Form NRC-5, in accordance with the instructions contained in that form, or on clear and legible records containing all the information required by Form NRC-5.

KCE'S RESPONSE:

The radiation badge dosimetry processing was to be handled by our corporate secretary who inadvertently did not send the badges into Troxler for the period of 1/1/93 to 7/1/93. Note, the device was not in use from 01/93 to 07/93. This omission was corrected immediately upon the writer's knowledge of same, and the results of these and subsequent tests have been made available to NRC.

KCE'S CORRECTIVE STEP:

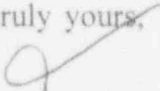
None required, see our response above.

We are somewhat perplexed with having to continue to provide the same responses to your notice of violation as we have on December 4, & 17, 1993 and January 26, 1994.

We ask you to reconsider the amount of the fine as noted herein and advise so we may put this behind us.

We advised your personnel located in King of Prussia, that I will be incapacitated beginning February 23, 1994 for 6-8 weeks. I will respond to your response to our request as soon as possible.

If you have any further questions on the above, please feel free to call.

Very truly yours,


Allyn E. Kilsheimer, P.E.
President
KCE Structural Engineers, P.C.

cc: Thomas T. Martin Regional Administrator,
U.S. Nuclear Regulatory Commission, Region I
AEK:sjt



TROXLER

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12-8-93

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1818 Jefferson Place NW
Washington, D.C. 20036

To Whom It May Concern:

Our records indicate your firm has prepaid for one individual to attend our Nuclear Gauge Training Course in Research Triangle Park, N.C. on 12-2-93

This letter entitles one (1) person to attend a training course at your convience, within the next twelve (12) months. Credit will expire if not used within one (1) year from the date of the missed class.

We have enclosed a schedule of seminars available in the near future. If one of these is satisfactory, complete the preregistration form and return it as soon as possible.

Please bring this original letter as proof of the credit when attending, or it can be forwarded with the preregistration form.

Sincerely,

TROXLER ELECTRONIC LABORATORIES

Peggy K. Roe-Fuller

DATE OF ISSUE: 12-2-93

CREDIT: \$129.00

enclosure

Troxler Electronic Laboratories, Inc. • Troxler International, Ltd.

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