



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

September 14, 1990

The Honorable Alan K. Simpson  
United States Senate  
Washington, D.C. 20510-5002

Dear Senator Simpson:

I am responding to your August 7, 1990 letter to Commissioner James R. Curtiss in which you stated Mr. Fraser's concerns regarding the Notice of Violation and Proposed Imposition of Civil Penalty issued to High Mountain Inspection Service, Inc. (HMIS) and the press release that accompanied it. In addition, you asked that we address the four requests made by Mr. Fraser.

While a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) has been issued in this matter, the enforcement process is not yet complete. The licensee is required to respond to that document and address specific issues concerning the violations. This provides an opportunity, beyond the Enforcement Conference that was held on May 31, 1990, for the licensee to state why he believes the proposed civil penalty should be reduced or withdrawn. We have only recently received HMIS' response to the proposed action and we will, of course, give full consideration to the statements made by Mr. Fraser. Because this process is still ongoing, and it may lead to a hearing, it is inappropriate to address the merits of the case, including the civil penalty, at this time.

As to the four specific requests in Mr. Fraser's letter that you asked us to consider, the first is a request for an additional press release because of the content of the NRC press release. The press release stated in a concise manner the basis for NRC's action. Mr. Fraser is correct that the press release did not state that the inspection of HMIS "did not disclose inadequacies in HMIS' management of its radiation safety program..." as stated in the cover letter of the NOV. The press release did not suggest that other parts of the program were deficient in any way. In fact, it noted the positive actions the company had taken to address the violations and that the proposed civil penalty had been reduced because of the company's past regulatory performance. While there is always a risk that this publicity could negatively affect the licensee that is the subject of the enforcement action, this risk is outweighed by our responsibility to keep the public informed of our regulatory actions and should be added incentive for licensees to conduct operations with the utmost care. We are not prepared to state, as requested by Mr. Fraser, that the NRC found "the HMIS radiation safety program to be more than adequate." In addition, we do not believe it is appropriate to state, as proposed by Mr. Fraser, that the violations were caused by the independent actions of an individual because we have not conducted a full investigation into that issue and to so state may imply that HMIS was not responsible for the actions of its employees when using licensed material. Unless some further basis were to arise, we do not intend to issue a revised press release.

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The second request is for a letter that characterizes HMIS' radiation safety program. The letter enclosing the NOV stated only that "NRC's inspections did not disclose inadequacies in HMIS' management of its radiation safety program,..." As indicated above, we are not prepared to issue a letter that states that the program "more than adequately meets the requirements of the regulations and that NRC has no problem with the management of HMIS licensed activities." The violations demonstrate that inadequate control of licensed activities occurred. Moreover, although the civil penalty was mitigated 50% for past performance, violations found in prior inspections precluded greater mitigation.

The third request is that the NRC refrain from issuing civil penalties and press releases when violations are caused solely by an individual. The Commission has previously considered the question of whether responsibility for violations should be divided between licensees' management and its employees. The Commission stated in Atlantic Research Corporation, 11 NRC 413 (1980), that this would be an unsound enforcement policy because management's freedom from culpability could be interpreted as freedom from responsibility. In that decision, and more recently in the proposed rule on Willful Misconduct by Unlicensed Persons (55 Fed Reg 12374, April 3, 1990), the Commission concluded that a strong enforcement policy dictates that a licensee be held accountable for violations committed by its employees in the conduct of licensed activities. Therefore, we do not intend to change our enforcement practice.

Mr. Fraser's fourth request is that NRC institute regulations that provide for assessing violations against individuals whose actions are the sole cause of the violations and the individuals have had proper training, etc. For the reasons stated above, and even though the Commission has become concerned about instances of willful misconduct on the part of unlicensed individuals and, accordingly, published a Notice of Proposed Rulemaking: Willful Misconduct by Unlicensed Persons, the Commission remains convinced that licensees' management must remain responsible for the conduct of operations.

In regard to Mr. Fraser's suggestion that NRC Headquarters ("the Washington office") made the decision to propose a civil penalty when regional officials apparently were satisfied, his perception may have been created by the NRC efforts at the Enforcement Conference to explain that this was not a regional action, but an agency action, and that the agency is concerned about radiographers' failures to conduct surveys. Failure to survey has resulted in most radiographer overexposures, and radiographer overexposures have historically been the most severe compared to other nuclear activity overexposures.

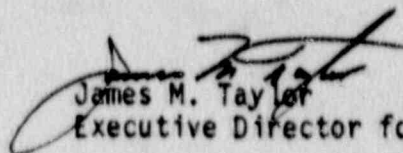
We are continuing to review the HMIS response in accordance with the Enforcement Policy and will advise you when a decision is reached as to whether a civil

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penalty should be imposed and, if so, in what amount. I trust this reply responds to your request.

Sincerely,

  
James M. Taylor  
Executive Director for Operations