

MAR 03 1994

Docket No. 99990001

General License

Exxon Chemical Company
ATTN: Mr. James J. Doyle, Jr.
Counsel
P.O. Box 3272
Houston, Texas 77253-3272

Dear Mr. Doyle:

SUBJECT: Special Investigation No. 1-91-008

This letter refers to your December 8, 1993 correspondence, in response to our November 12, 1993 letter. The violation discussed in our letter concerned the unauthorized transfer of byproduct material possessed pursuant to the general license in 10 CFR 31.5.

We agree that Exxon Chemical company acted in good faith in responding to previous NRC requests to retrieve and dispose of the gauges properly. A violation of 31.5(c)(8) did nonetheless occur, and therefore, was cited. However, the NRC did not consider the violation "willful," nor did we imply such in our November 12 letter.

We have reviewed the information you provided regarding the violation. In your letter you requested that we withdraw the violation based on the belief of Exxon Chemical Company representatives that the individuals who were receiving the licensed material could do so; that NRC did not respond until approximately three years after the sale of the gauges occurred; that a violation was not issued until approximately two years after that; and that the issue was of minor safety significance. After review of your response, we have determined that it does not provide a basis to warrant withdrawal of the violation. It is the responsibility of the individual possessing material under a general license, in this case Exxon Chemical Company, to abide by the conditions of the general license. In transferring the material, Exxon Chemical Company did not abide by those conditions. While a long time period did occur between each NRC action, it is not germane to consideration of whether or not a Notice of Violation is issued for the failure of Exxon Chemical Company to follow regulatory requirements. Your request to withdraw the violation is denied. With respect to your request that the violation be classified at Severity Level V, the NRC maintains that the Severity Level IV classification is more appropriate since the material was transferred to an individual who did not possess a specific license to receive it.

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Concerning your request for a hearing, the Atomic Energy Act does not provide a right to a hearing in this matter. The Commission's regulations do not provide a formal hearing, even for licensees, for violations not associated with a civil penalty or order. In these cases, consideration of written correspondence is adequate to resolve differences. The circumstances of this matter are not such that you would be entitled to a hearing as a matter of due process. We have also carefully considered your request under our discretionary authority, and based on your submittals and our evaluation of them, we have concluded that a hearing is not necessary to appropriately consider the issues in this matter nor is it warranted in the public interest. Thus, the request is denied.

Attachment X to your December 8, 1993 letter "Procedure for Transfer or Disposal of Nuclear Gauging Equipment" apparently was developed to preclude a similar situation occurring in the future. We have reviewed it and have concluded that it is an adequate preventive and corrective action. Thank you for providing it to us.

No reply to this letter is required. Your cooperation with us is appreciated.

Sincerely,

Original Signed by

Charles W. Hehl, Director
Division of Radiation Safety and
Safeguards

cc:
Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
Commonwealth of Pennsylvania

bcc:
Region I Docket Room (w/concurrences)
R. R. Bellamy, RI
D. J. Holody, RI

DRSS:RI
McGrath
2/17/94

[Signature]
DRSS:RI
Pasciak
2/17/94

FAC
DRSS:RI
Bellamy
2/18/94

RA:RI *ML*
Holody *W/Change*
2/23/94

RA:RI
Smith
2/18/94

*Should have
no authority
for a hearing
Applied to
AEP by NLRB
multiplicity.*

[Signature]
DRSS:RI
Wahl
2/18/94

OE
Lieberman
2/1/94

*Rec'd
by fees for
Santoro, OE on 2/24/94
no change.*