

NOTICE OF VIOLATION

AND

PROPOSED IMPOSITION OF CIVIL PENALTY

As a result of a special safety inspection conducted at Cleveland, Ohio on November 9, 1982, it appears that a violation of NRC requirements has occurred. The licensee shipped a 114 millicurie cesium-137 sealed calibration source by common carrier without identifying on the shipping papers that the package contained radioactive material and without labeling the package with a Radioactive label. Upon discovery of this violation the licensee failed to notify the carrier and also failed to notify the customer that the radioactive material had been shipped.

In order to emphasize the responsibility of licensees to properly control the shipment of licensed radioactive material, including the preparation of shipping papers and the labeling of packages, NRC proposes to impose a civil penalty in the amount of Six Hundred and Twenty-Five Dollars. In accordance with the NRC Enforcement Policy (10 CFR Part 2, Appendix C) 47 FR 9987 (March 9, 1982), and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended ("Act"), 42 U.S.C. 2282, PL 96-295, and 10 CFR 2.205, the particular violation and the associated civil penalty is set forth below:

10 CFR 71.5(a) requires that no licensee shall transport any licensed material outside of the confines of his plant or other place of use, or deliver any licensed material to a carrier for transport, unless the licensee complies with the applicable requirement of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170-189.

49 CFR 172.203(d) requires that shipping papers for a shipment of radioactive material must include, among other things, the following entries: The name of each radionuclide in the radioactive material; the activity contained in each package of the shipment; the category of label applied to each package; and the transport index assigned to each package.

49 CFR 172.403(c) requires that each package of radioactive material must be labeled with a RADIOACTIVE YELLOW-II label if the package measures more than 0.5 but not more than 50 millirem per hour at each point on the external surface of the package, and not more than 1.0 millirem per hour at three feet from each point on the external surface of the package.

Contrary to the above, the shipping papers for a package containing 114 millicuries of cesium-137 that was shipped by the licensee on September 24, 1982, did not include the name of the radionuclide; the activity contained in the package; the category of label applied to the package; or the transport index assigned to the package. This package measured 12 millirem per hour on the external surface and 0.5 millirem per hour at three feet from the external surface and was not labeled with a RADIOACTIVE YELLOW-II label.

This is a Severity Level III violation (Supplement V).

(Civil Penalty \$625)

Pursuant to the provisions of 10 CFR 2.201, Victoreen, Incorporated is hereby required to submit to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, IL 60137, within 30 days of the date of this Notice a written statement or explanation, including for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation, if admitted; (3) the corrective steps which have been taken and the results achieved; (4) the corrective steps which will be taken to avoid further violations; and (5) the date when full compliance will be achieved. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, Victoreen, Incorporated may pay the civil penalty in the amount of \$625 or may protest imposition of the civil penalty, in whole or in part, by a written answer. Should Victoreen, Incorporated fail to answer within the time specified, the Director, Office of Inspection and Enforcement will issue an Order imposing the civil penalty proposed above. Should Victoreen, Incorporated elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, such answer may: (1) deny the violation listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty, in whole or in part, such answer may request remission or mitigation of the penalty. In requesting mitigation of the proposed penalty, the five factors contained in Section IV(B) of 10 CFR Part 2, Appendix C should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate statements or explanations by specific reference (e.g., giving page and paragraph numbers) to avoid repetition. Victoreen, Incorporated's attention is directed to the other provisions of 10 CFR 2.205, regarding the procedures for imposing a civil penalty.

Upon failure to pay any civil penalty due, which has been subsequently determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282.

FOR THE NUCLEAR REGULATORY COMMISSION

Albert Davis

for James G. Keppler
Regional Administrator

Dated at Glen Ellyn, Illinois
this 6th day of Jan 1983