

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

Construction Testing  
and Engineering, Inc.

Docket No. 15000004  
License No. (Ca.5309-80)  
EA 93-292

During an NRC inspection conducted on September 29, 30, and October 25, 1993, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below.

10 CFR 30.3 requires, in relevant part, that no person shall possess or use byproduct material except as authorized by a specific or general license issued by the NRC.

Contrary to the above, during the period of August 6-20, 1993, Construction Testing and Engineering possessed and used byproduct material in areas under federal jurisdiction at Edwards Air Force Base without a valid NRC license.

This is a Severity Level III violation (Supplement VI).  
Civil Penalty - \$500.

Pursuant to the provisions of 10 CFR 2.201, Construction Testing and Engineering, Inc. is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued to show cause why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. 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, the Licensee may pay the civil penalty by letter addressed to the

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Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and 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 factors addressed in Section VI.B.2 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 parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been 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. 2282c.

The response noted above (Reply to Notice of Violation), letter with payment of civil penalty, and Answer to a Notice of Violation should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV.

Dated at Walnut Creek, California  
this 24<sup>th</sup> day of March, 1994

U.S. NUCLEAR REGULATORY COMMISSION  
REGION V

Report No: 94-04  
Docket No: 1500004 (California License 5309-80)  
EA 93-292

Licensee: Construction Testing and Engineering, Inc.  
2414 Vineyard Avenue, Suite G  
Escondido, California

Enforcement Conference Conducted: March 8, 1994

Inspector: Kent M. Prendergast 3/18/94  
Kent M. Prendergast, Radiation Specialist Date Signed

Approved By: G. P. Yuhas 3/18/94  
Gregory P. Yuhas, Chief, Nuclear Materials Date Signed  
Safety Branch

Summary:

Enforcement Conference on March 8, 1994 (Report No. 15000004/94-04)

An Enforcement Conference was held by telephone to discuss NRC inspection findings concerning the licensee's possession and use of byproduct materials in areas under federal jurisdiction at Edwards AFB without a valid NRC license or a NRC general license issued pursuant to 10 CFR 150.20. The violation is described in NRC Inspection Report No. 15000004/93-13.

Results:

The licensee acknowledged the violation. The licensee's president stated that the licensee was unaware of the requirement for an NRC license or an NRC Form 241 for work in areas under federal jurisdiction at Edwards AFB and stated that the licensee will file an NRC Form 241 for all future operations in areas under federal jurisdiction.

## ENFORCEMENT CONFERENCE DETAILS

### 1. Enforcement Conference Attendees:

#### Licensee Representatives:

R. Ballard, President, CTE  
T. Gaeto, Vice President, CTE  
D. Archinal, Q.A. Engineer, CTE  
K. Blesch, RSO, CTE

#### NRC Representatives:

G. Yuhas, Chief, Radioactive Materials Safety Branch, RV  
R. Huey, Enforcement Officer, RV  
G. Powers, OI  
K. Prendergast, Radiation Specialist, RV

### 2. Discussion:

On March 8, 1993, an enforcement conference was held in Region V, via telephone, with the individuals listed above participating. Matters discussed during the enforcement conference related to the NRC inspection conducted on September 29, 30, and October 25, 1993, and the Office of Investigations (OI) results dated February 18, 1994. The inspection reviewed the licensee's activities at Edwards Air Force Base (AFB) during the period of August 6-20, 1993, while using byproduct material in areas under exclusive federal jurisdiction at Edwards AFB. The inspection findings were documented in NRC Inspection Report 1500004/93-13, dated November 24, 1993.

Mr. Ballard began by stating that CTE had not identified any factual errors in NRC Inspection Report 93-13. Mr. Ballard also stated that CTE had been unaware of the special requirements for operations in federal jurisdiction. He noted that in late 1992 the previous RSO and a CTE QA engineer had learned of federal licensing requirements for work at March AFB, but the jurisdiction was not clear. After making a good faith effort with the base RSO and the NRC, CTE had not been able to resolve the areas under federal jurisdiction at March. Consequently, they performed operations there under the CTE State of California radioactive materials license. Mr. Ballard also stated that CTE had concluded that the licensing requirements were specific to March and did not apply to other federal installations.

Mr. Blesch stated that he was unaware that CTE's California radioactive materials license specifically prohibited work in areas under exclusive federal jurisdiction. Mr. Gaeto stated that CTE's previous RSO had been involved in determining federal requirements for work in areas under federal jurisdiction. However, the RSO left employment with CTE in February 1993 without informing either the RSO or CTE management of the specific requirements for an NRC license or an NRC Form 241 for work in areas under federal jurisdiction.

Mr. Blesch also mentioned that the Troxler training course he had attended did not address working in areas under federal jurisdiction. Consequently, as the new RSO he was not aware that they needed an NRC license or an NRC Form 241 for work at Edwards AFB. Mr. Ballard stated that when they learned of the requirements for an NRC license at Edwards on or about August 20, 1993, they immediately ceased operations at Edwards, and applied for reciprocity via an NRC Form 241 on September 2, 1993.

Mr. Blesch also stated that CTE has addressed the other problems identified in NRC Inspection Report 15000004/93-13: (1) CTE ordered spare film badges, and all personnel will be issued film badges or visitors badges before working with the nuclear gauges; (2) CTE has begun a 6-month inventory cycle, to include checks on all devices to insure that they have shipping papers, proper labels, and calibrations; and (3) CTE will perform leak tests at 6-month intervals for all gauges used in areas under federal jurisdiction even though CTE's California license only requires annual leak tests. In addition, they will review and train their personnel on federal regulations, including 10 CFR Parts 19, 20, 71, and 150 before to working in areas under federal jurisdiction.