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DEC 10 1990

Docket No. 030-08916
License No. 45-15325-01
EA 90-183

McCallum Testing Laboratories, Inc.
ATTN: Mr. J. Pritchard, President
Post Office Box 13266
Chesapeake, Virginia 23325

Gentlemen:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$800
(NRC INSPECTION REPORT NO. 45-15325/01/90-01)

This refers to the Nuclear Regulatory Commission (NRC) special safety inspection conducted by D. J. Collins on October 12, 1990, at the McCallum Testing Laboratories facility in Chesapeake, Virginia. The inspection included an examination of the available facts and circumstances related to the theft and subsequent recovery of a Troxler portable density gauge containing licensed sources of cesium-137 and americium-241 in Virginia Beach, Virginia on October 4-5, 1990. The report documenting this inspection was sent to you by letter dated October 19, 1990. As a result of the inspection, a significant failure to comply with NRC regulatory requirements was identified, and accordingly, NRC concerns relative to the inspection findings were discussed in an Enforcement Conference held on November 5, 1990. The letter summarizing this Conference was sent to you on November 8, 1990. A Confirmation of Action Letter was also sent to you on October 17, 1990.

The violation described in Part I of the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) involved the failure of a licensee technician to secure licensed material against unauthorized removal or to maintain continuous observation and control of licensed material in an unrestricted area. On October 4, 1990, the technician loaned his vehicle to another individual. The individual drove the vehicle to a construction office and while he went into the office he left the vehicle running and unattended and the gauge unsecured. The vehicle contained a Troxler Model 3440 moisture/density gauge. The technician stated that the gauge source operating rod was not locked, nor was the transport box locked. While the individual was in the construction office, someone stole the vehicle. The theft of the vehicle was reported to local law enforcement authorities and the vehicle and the gauge were subsequently recovered on the following day. Fortunately, there was no evidence to indicate that anyone had tampered with the gauge.

The NRC considers this event to be very significant because a qualified gauge operator, who had been trained and was fully aware of the requirements for and importance of controlling licensed material, created a potential hazard to the health and safety of the public. Although this violation would normally be categorized at Severity Level III, in accordance with the "General Statement of

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Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C (1990), the violation has been categorized at Severity Level II, since the circumstances involved careless disregard of NRC requirements and public health and safety.

To emphasize the importance of complying with regulatory requirements associated with license conditions, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$600.00 for the Severity Level II violation. The base value of a civil penalty for a Severity Level II violation is \$800.00. The escalation and mitigation factors in the Enforcement Policy were considered.

As to identification and reporting, we recognize that you identified and reported this self-disclosing event to the NRC and the local law enforcement authorities. However, the report was not made immediately and to the office specified in 10 CFR 20.402. Therefore, mitigation was not warranted. Neither escalation nor mitigation was warranted for corrective action. The staff recognizes that corrective action was taken in that licensee personnel were briefed on the event and instructed to ensure they comply with regulatory requirements. However, additional action should have been taken, such as additional physical reminders for your technicians and more frequent field audits that would help preclude recurrence. Mitigation of 50 percent was warranted for overall good past performance; however, full mitigation was not warranted because two violations were cited during each of the NRC inspections conducted in December 1987 and January 1984. Escalation of 50 percent was warranted for prior notice of similar events because at least four NRC Information Notices (INs) (INs 88-07, 88-02, 87-31, 86-67) sent to you related to the control of licensed material. Further escalation for this factor was not warranted because of your utilization of Information Notices to inform employees about potential problems described in those Notices. The other adjustment factors in the Policy were considered and no further adjustment to the base civil penalty is considered appropriate. Therefore, based on the above, the base civil penalty has been neither increased nor decreased.

We considered an additional citation for failure to make a timely report of the loss or theft of licensed material. It is noted that an attempt was made to report the loss to our Headquarters office. However, that does not meet the requirements of 10 CFR 20.402. In the future, it is expected that the licensee will be familiar with the reporting requirements.

The violation described in Part II of the Notice involved the failure of your Radiation Safety Officer to ensure that personnel authorized to use gauges have completed the training required by license condition. We recognize your personnel did complete another training course subsequently determined to be equivalent to the manufacturer's and this has been included as an authorized course on your license in accordance with your October 17, 1990 request. Therefore, no further response is required from you on this matter.

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You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Should you have any questions concerning this letter, please contact us.

Sincerely,

Original Signed By
J. L. Milhoan

Stewart D. Ebnetter
Regional Administrator

Enclosure:
Notice of Violation and Proposed
Imposition of Civil Penalty

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