

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

McCallum Testing Laboratories, Inc.  
Chesapeake, Virginia

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

During an NRC inspection conducted on October 12, 1990, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (1990), 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:

I. Violation Assessed a Civil Penalty

10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that materials not in storage be under constant surveillance and immediate control of the licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for purposes of protection of individual from exposure to radiation and radioactive materials.

Condition 16 of License No. 45-15325-01 requires the licensee to conduct its program in accordance with the statements and representations made in a letter dated March 17, 1988. Item 2.b of the letter dated March 17, 1988 states that licensed materials in devices will be stored in a locked enclosure such as a transport vehicle in a way that will prevent access by unauthorized personnel. Item 2.c (3) of that letter states that to prevent unauthorized access, use or removal of the gauge from temporary job sites, the gauge is never to be out of the operator's sight, and when not in use, it is locked up in a box and put in the vehicle.

Contrary to the above, on October 4, 1990, licensed materials consisting of two sealed sources (one 8 millicuries of Cs-137 and the other 44 millicuries of Am-241) contained in an unlocked Troxler 3440 moisture/density gauge located in the cargo area of an unlocked licensee vehicle parked on a public street, an unrestricted area, were not under constant surveillance and immediate control of the licensee.

This is a Severity Level II violation (Supplement VI).  
Civil Penalty - \$800

II. Violation Not Assessed a Civil Penalty

Condition 11 of License No. 45-15325-01 requires that licensed materials be used by, or under the supervision and in the physical presence of, individuals who have completed the manufacturer's training, and are approved by the Radiation Protection Officer.

Contrary to the above, from July 16, 1990 through October 5, 1990, the Radiation Protection Officer permitted individuals to use licensed materials when those individuals neither had completed manufacturer's training nor were under the supervision and in the physical presence of individuals who had been trained by the manufacturer.

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

Pursuant to the provisions of 10 CFR 2.201, McCallum Testing Laboratories, Inc. (Licensee) 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 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 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 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 V.B of 10 CFR Part 2, Appendix C (1990), 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 II, 101 Marietta St, N.W., Atlanta, GA 30323.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By  
J. L. Milhoan

Stewart D. Ebnetter  
Regional Administrator

Dated at Atlanta, Georgia  
this 10<sup>th</sup> day of December 1990