



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DEC 21 1990

Docket No. 30-29019
License No. 49-26808-01
EA 90-104

Keith P. Tyler, Esq.
Post Office Box 2671
Casper, Wyoming 82602

Dear Mr. Tyler:

This will acknowledge receipt of your letter dated November 29, 1990 and High Mountain Inspection Service's (HMIS) check for \$2,500.00 in payment of the civil penalty imposed by NRC in its Order dated October 29, 1990. Your corrective actions will be examined during future inspections.

In your letter you expressed concern that in this action the NRC singled out and fined HMIS for a problem that is common throughout the industry, and also that we have not directed action against the responsible party, the individual radiographer.

As to your first point, I assure you that HMIS is not being singled out or treated differently from others in the industry. Unfortunately, the failure to properly conduct a radiation survey does appear to happen too frequently in practice. Nonetheless, we consider it a serious violation because of the significant potential for injury. In every instance that the NRC becomes aware of such a violation, enforcement action is taken in accordance with the Enforcement Policy. In most cases this results in a civil penalty being imposed, and the HMIS case is but one of several this year in which that has occurred.

Our letter of October 29, 1990 forwarding the Order Imposing Civil Monetary Penalty addressed the question of responsibility for performance by employees of NRC licensees. In the Appendix to that Order, under "The NRC Evaluation of Licensee's Request for Mitigation," we discussed at some length the reasoning behind the Commission's philosophy that the licensee must be held accountable, regardless of whether action also is taken against the individual. At the end of that section of the Appendix, we discussed the NRC's concern in this area and noted that we are developing regulations that would provide for taking direct action against individuals in cases of willful violations of NRC requirements, but as we stated: "However, any such revision of the Commission's regulations would not relieve licensees of their responsibility for the acts of their employees. Nor would the changes preclude the NRC from taking action against the licensee for the acts of its employees." The NRC philosophy is consistent with the Texas program described in the material that you sent, as that state also considers the licensee ultimately responsible, though it is now sharing the enforcement action with the individual.

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Keith P. Tyler

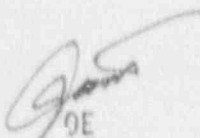
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I hope that this responds to your concerns.


Sincerely,
Original Signed By
James Lieberman
James Lieberman, Director
Office of Enforcement

cc: Mr. Bill Fraser
R. Martin, Region IV

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