

DCS

February 21, 1991

Docket No. 030-08572  
License No. 20-15102-01  
EA 90-062

P.X. Engineering Company, Inc.  
ATTN: Paul O'Neil  
President  
25 FID Kennedy Avenue  
Boston, Massachusetts 02210

Gentlemen:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$7,500  
(NRC Inspection Report No. 88-002 and Investigation Report 1-88-016)

This letter refers to the NRC safety inspection conducted on June 28-29, 1988, at Boston, Massachusetts of activities authorized by NRC License No. 20-15102-01. This letter also refers to the subsequent investigation conducted by the NRC Office of Investigations (OI). The report of the inspection was forwarded to you on August 17, 1988. A copy of the redacted OI Report of Investigation was also forwarded to you on August 17, 1990. During the inspection and investigation, violations of NRC requirements were identified. On September 11, 1990, an enforcement conference was held with you and members of your staff during which these violations, the fines, and your corrective actions were discussed.

The violations are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). The violations include the former Radiation Safety Officer (RSO): (1) failing to adequately supervise an individual acting as a Radiographer's Assistant when the individual was using a radiographic exposure device; and (2) providing information to the NRC that was not accurate in all material respects, in that during an interview with two NRC inspectors on June 28-29, 1988, the RSO stated he was personally present during the performance of all radiographic operations performed by two of your employees when, in fact, the RSO subsequently admitted to an OI investigator that he was not present at all times for a number of radiographic operations performed by one of the individuals between November 1987 and June 1988.

The NRC notes that Violation A in the Notice of Violation (NOV) enclosed with our letter dated August 17, 1988, which also transmitted the report of the NRC's June 28-29, 1988 inspection, involved two unqualified individuals acting as Radiographers Assistants in that these individuals had not completed the required tests to be qualified (one of these individuals was no longer employed by you at the time of this inspection). In your letter dated September 12, 1988, in response to Violation A of this NOV, you stated that the trainee present during the inspection had since passed the written and

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field tests required by your license and that your company will no longer use trainees prior to becoming a Radiographer's Assistant. Subsequently, that violation was again discussed at the September 1990 enforcement conference because of OI's findings.

At the time that Violation A of the August 17, 1988 NOV was issued, the NRC believed, based on statements made by the RSO, that the safety significance of the violation was minimal because the RSO was present on all occasions when the individuals performed radiography. However, during the subsequent OI investigation (initiated after allegations were received by the NRC following issuance of that Notice of Violation), the RSO admitted to an NRC investigator that although he was present in the facility and "monitored" all radiography being performed, he was not present at all times with one of the individuals (to watch the individual's performance of operations) on every occasion when the source was being exposed. Since a person acting as a Radiographer's Assistant is required to be personally supervised by, and in the presence of, a radiographer and you allowed a trainee to act as a Radiographer's Assistant without such supervision on several occasions, a violation for the failure to supervise is being issued as Violation A in the enclosed Notice.

During the transcribed enforcement conference on September 11, 1990, the RSO asserted (in contradiction to his sworn testimony to OI on November 16, 1989), that he was monitoring every radiographic exposure made by the trainee in that, although he may not have been next to the individual cranking out the source, he was watching him from a distance. Notwithstanding the RSO's contentions at the conference, the NRC has concluded that the RSO provided inaccurate information to the NRC during the June 28-29, 1988 inspection, as set forth in Violation B of the enclosed Notice. This conclusion is based on the admissions by the RSO to OI during his sworn testimony (which was transcribed) on November 16, 1989 wherein he admitted he was occasionally in his office doing paper work, and was not present on every occasion when the source was out and radiography was being performed. The NRC recognizes that during the enforcement conference you provided an explanation of the inconsistencies in the RSO's statement, and you also stated that he was soon to be replaced.

A license to use radioactive material is a privilege that confers upon the licensee, its officials and employees, the special trust and confidence of the public. When the NRC issues a license, it is expected and required that the licensee, as well as its employees, and contractors, be completely candid and honest in all of their dealings with the NRC. This includes ensuring that all information provided to the NRC, either orally or in writing, as well as the creation of all records of performance of activities required by the license, are complete and accurate in all material respects since the NRC relies on these statements and records to determine compliance with regulatory requirements.

False statements by the RSO to the NRC inspectors indicating that he was personally present on all occasions when one of the individuals performed radiography without his having actually been present on all such occasions,

violates the Commission's requirements. It is a significant regulatory concern for an RSO acting as a radiographer to not fully supervise radiographic operations. Being in the same building where radiography is performed is not adequate to fulfill NRC's requirement for supervision. In addition, it is of concern that during the June 28-29, 1988 inspection, the RSO could not demonstrate how radiography is performed, and was generally unfamiliar with the relevant NRC requirements. Consequently, we found it necessary to issue a Confirmatory Action Letter to assure that additional training would be given the RSO.

Therefore, these violations represent a significant breakdown in management control based on the RSO's lack of supervision, the RSO's providing erroneous information, and your continued utilization of the RSO notwithstanding his limited ability to serve as the RSO. Accordingly, the violations set forth in the Notice have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, (Enforcement Policy) (1988), that was in effect at the time of the violations.

These violations demonstrate that licensee's management, including the RSO, did not provide the necessary level of oversight to ensure that licensed activities were performed in accordance with regulatory requirements. Therefore, to emphasize the importance of your responsibilities for ensuring that (1) licensed activities are conducted safely and in accordance with the conditions of your license, and (2) all information communicated to the NRC is both complete and accurate in all material respects, I have been authorized, after consultation with the Commission, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$7,500.

The base civil penalty amount for a Severity Level III violation is \$5,000. The escalation and mitigation factors in the enforcement policy were considered and on balance a 50 percent escalation of the base civil penalty amount is appropriate because: (1) the violations were identified by the NRC and therefore, in accordance with the policy in effect at the time, no adjustment of the base civil penalty on this factor is warranted; (2) your corrective actions, (which included qualification of your only radiography trainee as a radiographer, and replacement and removal of the RSO from licensed activities) were not considered prompt and were only minimally acceptable in that you did not replace your RSO until two months after the enforcement conference and, therefore, a 50 percent escalation of the base civil penalty is warranted; (3) mitigation warranted for prior good performance was offset by the escalation warranted for multiple examples involved in the failure to adequately supervise; and (4) the remaining escalation and mitigation factors were considered and no further adjustment was considered appropriate since this case did not involve prior notice or duration.

Finally, the NRC is concerned that on a number of occasions between November 1987 and June 1988, your source utilization logs identified the RSO as the radiographer and he admitted that his signature on these logs indicated he was present during radiography, when in fact, testimony given to OI, (including that

of the RSO) established that the RSO was not present on all occasions to act as a radiographer when the source was utilized in radiographic operations. Although the NRC has decided not to include a citation for the falsification of these logs in the enclosed Notice, the NRC is placing you on notice that should such falsification occur in the future, appropriate enforcement action will be taken.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice in preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, your response to this letter should describe the changes that have been made and actions that have been or will be implemented to ensure that (1) licensed activities are conducted in accordance with your license, and (2) information submitted to the NRC, is complete and accurate. This response should also provide your basis for concluding that each person involved in licensed activities understands his or her responsibility and is committed to assure that NRC requirements will be followed and information submitted to the NRC will be complete and accurate. After reviewing your response to this Notice, including your proposed corrective actions, and the results of future inspections, the NRC will determine whether further 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," Part 2 Title 10, Code of Federal Regulations, a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

The responses directed by this letter and the enclosures 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. 96-511.

Sincerely,  
Original Signed By:  
Thomas T. Martin

Thomas T. Martin  
Regional Administrator

Enclosure:  
Notice of Violation and  
Proposed Imposition of Civil Penalty

cc w/encls:  
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