

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

P.X. Engineering Company, Inc.
Boston, Massachusetts

Docket No. 030-08572
License No. 20-15102-01
EA 90-065

During an NRC inspection conducted on June 28-29, 1988, at the licensee's facility in Boston, Massachusetts, and a subsequent investigation by the NRC Office of Investigations, 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 (1988), 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 violations and associated civil penalty are set forth below.

- A. 10 CFR 34.44 requires that whenever a Radiographer's Assistant uses radiographic exposure device, uses sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) the radiographer's personal presence at the site where the sealed sources are being used, (b) the ability of the radiographer to give immediate assistance if required, and (c) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the above, on a number of occasions between November 1987 and June 28, 1988, an individual acted as a Radiographer's Assistant, utilized a radiographic exposure device and was not adequately supervised by a radiographer, in that the radiographer/Radiation Safety Officer (RSO) was not watching the performance of operations including exposure of the source.

- B. 10 CFR 30.9 (a) requires, in part, that information provided to the Commission by a licensee, or information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects.

Contrary to the above, information provided by the licensee's RSO during an interview with two NRC inspectors on June 28, 1988, was inaccurate in that the RSO, in response to questions by the inspectors regarding the RSO's personal presence during the performance of radiography by two licensee employees, stated that he was personally present during all radiographic exposures performed by both individuals. This statement by the RSO was not accurate in that the RSO was not personally present at all times on all occasions when one of the individuals performed radiographic

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exposures. By the admission of the RSO, on a number of occasions between November 1987 and July 1988, he did not observe all radiographic exposures in that he states that he was in his office located approximately 50 feet from the location where the radiography was being performed. This statement was material because it relates directly to an NRC requirement and also because one of the individuals acting as a Radiographer's Assistant had not been given an oral test as required by the licensee's procedures and, had the inspector been aware that this individual was not being adequately supervised by the RSO, the inspector may have determined that this situation had more than minimal safety significance, and significant enforcement action may have been taken against the licensee at that time.

These violations have been categorized in the aggregate as a Severity Level III problem. (Supplements VI and VII).

Cumulative Civil Penalty - \$7,500 (assessed \$4,500 for Violation A and \$3,000 for Violation B).

Pursuant to the provisions of 10 CFR 2.201, P.X. Engineering Company, 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 Civil Penalty (Notice). The 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 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 "Answer to a Notice of Violation" and may: (1) deny the violations 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 (1988), 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. 2282(c).

The responses noted above (Reply to a 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, DC 20055 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By:

Thomas T. Martin

Thomas T. Martin
Regional Administrator

Dated at King of Prussia, Pennsylvania
this 21 day of February 1991