



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION V

1450 MARIA LANE, SUITE 210
WALNUT CREEK, CALIFORNIA 94596

Docket No. 030-30870
License No. 53-23288-01
EA 90-196

FEB - 7 1991

Fewell Geotechnical Engineering, Ltd.
ATTN: Mr. Richard B. Fewell
President
96-1416 Waihona Place
Pearl City, Hawaii 96782

Dear Sir:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES -
\$20,000 (NRC INSPECTION REPORT NOS. 90-01 AND 90-02)

This letter refers to the Nuclear Regulatory Commission (NRC) inspection conducted by Inspectors Beth Riedlinger and Robert Pate on October 4, 1990, and to a followup NRC inspection by Inspector David D. Skov and Investigator Philip Joukoff between October 23 and November 8, 1990. The inspections examined the activities authorized by License No. 53-23288-01 as they relate to radiation safety and to compliance with NRC regulations and the conditions of your license.

Both inspections identified numerous failures to comply with NRC requirements. The October 4, 1990 inspection identified nine apparent violations, documented in Inspection Report 90-01, and sent to you on October 25, 1990. The follow-up NRC inspection included a special field inspection of your licensed activities at temporary radiography job sites on October 23 and 25, 1990 at Campbell Industrial Park, Hawaii. During this follow-up inspection, NRC inspectors identified nine additional apparent violations, documented in Inspection Report 90-02, sent to you by letter dated November 16, 1990.

On November 20, 1990, an enforcement conference was held with you to discuss the violations, their causes, and your corrective actions. At the enforcement conference, you did not dispute the inspection findings, and you acknowledged the need for increased management attention to your radiation safety program. During the conference, you proposed to implement an independent audit program to more effectively monitor your licensed operations.

Some of the violations appear to have been willfully committed by one of your radiographers, and represented a significant threat to the health and safety of the radiographer, helper personnel assisting the radiographer, and members of the public. Because of the apparent willful violations and NRC's concern for the health and safety of radiography personnel and the public, an immediately effective NRC Order Modifying License was issued to you on November 2, 1990. The Order prohibited your utilization of this employee as a radiographer, radiographer's assistant or helper in licensed activities for three years. On October 26, 1990, prior to issuance of the Order, based on a telephone conversation with the NRC, you had voluntarily agreed to temporarily remove the radiographer from licensed activities.

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RETURN RECEIPT REQUESTED

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The violations, which are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalties, include the radiographer's providing false information to NRC personnel, and failures to: (1) secure the radiographic source in the shielded position after each source exposure; (2) conduct exposure device radiation surveys to ensure that the source had been returned to its shielded position after radiographic exposures; (3) rope off any portion of the restricted area boundary, post appropriate radiation warning signs for most of that boundary, and conspicuously post the high radiation area; (4) conduct instrument surveys to establish the radiation boundary; (5) prevent entry into the restricted area of individuals other than radiographers and radiographer's assistants; (6) label a shipping container with required "Radioactive" category labels; (7) check a pocket dosimeter for exposure after each radiographic exposure; (8) audit the radiation safety program once every six months; (9) audit a radiographer's performance at three month intervals; (10) check pocket dosimeters for correct response to radiation; (11) maintain records of survey meter calibration; (12) document pocket dosimeter readings; (13) maintain records of sealed source physical inventories; (14) maintain a record of an exposure device storage survey; (15) maintain required utilization logs; and (16) submit to the NRC a report of occupational radiation exposures for 1989. The large number and type of violations demonstrate the lack of effective management control of your radiation safety program.

The violation in Section I of the enclosed Notice occurred on October 25 and November 1, 1990, when your radiographer repeatedly provided false information to NRC personnel concerning his actions during the operations of October 23 and 25, 1990. The radiographer stated that he had complied with NRC requirements (and demonstrated the procedures he purportedly used) for securing the source in the fully shielded position after each exposure, for conducting surveys to assure that the source had been retracted to its fully shielded position, and for preventing the entry of unauthorized personnel into the restricted area, when in fact the radiographer had not complied with these requirements.

Licensees must be accurate and forthright in providing information to the NRC if the NRC is to ensure that licensed materials do not endanger public health and safety. This is particularly important in radiography, in which licensee personnel work at sites where operations are difficult to monitor but have the potential to harm unwary bystanders as well as radiography personnel. Licensee managers and the NRC must be able to trust licensee employees when they report they have complied with requirements designed to protect the public health and safety. Thus licensees must insist that their employees be scrupulously accurate in completing required records and in communicating with the NRC. Therefore, based on the willfulness of this violation and on the number of examples, and in accordance with the Enforcement Policy, the violation in Section I has been classified as a Severity Level II violation.

The numerous violations in Section II of the enclosed Notice demonstrate a significant lack of adequate management attention to, and oversight of, your licensed activities. The radiographer employee who was responsible for certain of the violations during field radiography on October 23 and 25, 1990, significantly degraded radiation safety and directly threatened public health and safety,

including his own. Moreover, as noted above, several of the violations committed by the radiographer were willful in that he repeatedly failed to comply with requirements of which he was well aware. However, as the licensee, you are in part responsible for these actions. These violations might have been prevented had you addressed the concerns NRC representatives discussed with you in an October 4, 1990 meeting (attended by you, your RSO, and the radiographer). During that meeting NRC stressed the need for increased management attention to the radiation safety program to ensure compliance with Commission requirements. Notwithstanding this discussion, you apparently failed to act to correct this situation, implicitly signalling to your personnel that they were free to perform licensed activities without fear of management oversight. The most significant violations occurred following the October 4 meeting. Individually, these violations would be classified at Severity Levels III, IV and V. However, taken together, with the elements of willfulness and lack of management oversight, they constitute a very significant regulatory concern. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy) 10 CFR Part 2, Appendix C (1990), the violations in Section II have been classified in the aggregate as a Severity Level II problem.

In your letter of December 17, 1990, you indicated that you will engage an independent health physics consultant to perform audits of operations and oversee the program. In addition, you stated that you are reviewing your operating procedures and will submit modified procedures in a request for license amendment.

To emphasize the importance of complying with license and regulatory requirements, and of ensuring management oversight of the licensed program, 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 Penalties (Notice) in the amount of \$20,000 for the violations described in Sections I and II of the enclosed Notice.

The escalation and mitigation factors in the Enforcement Policy were considered. The base value of a civil penalty for a Severity Level II violation is \$8,000. No adjustment was considered appropriate for the Severity Level II violation in Section I of the Notice. The base civil penalty for the violations in Section II was increased by 50 percent because all of the violations were NRC-identified, although they could have been discovered by you. The other adjustment factors in the Policy were considered and no further adjustment to the base civil penalties is considered appropriate.

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. In addition, your response should describe the changes and actions that have been or will be implemented in your management oversight to ensure that licensed activities are conducted in accordance with your license and NRC regulatory requirements. After reviewing your response to this Notice, including your proposed corrective actions and

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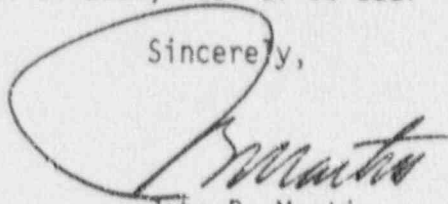
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the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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. 96-511.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Martin", enclosed within a hand-drawn oval.

John B. Martin
Regional Administrator

Enclosure:
Notice of Violation and Proposed
Imposition of Civil Penalties

Fewell Geotechnical Engineering, Ltd.

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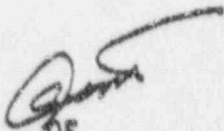
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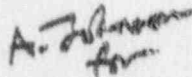
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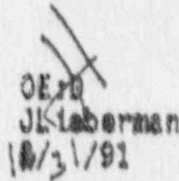
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