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UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

JUN 06 1994

Docket No. 030-33019  
License No. 08-30006-01  
EA 93-299

KCE Structural Engineering, P.C.  
ATTN: Mr. Allyn Kilsheimer  
President  
1818 Jefferson Place, N.W.  
Washington, D.C. 20036

Dear Mr. Kilsheimer:

Subject: RECISION OF PROPOSED CIVIL PENALTY - \$375  
(NRC Inspection Report No. 030-33019/93-002)

This refers to your letter dated February 18, 1994, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated February 4, 1994. Our letter and Notice described seven violations of NRC requirements. The violation in Section I of the Notice involved your failure to control access to licensed radioactive material that resulted in theft of the material. To emphasize the need for, and importance of, maintaining access control over licensed material at all times, a civil penalty in the amount of \$375 was proposed.

In your February 18, 1994 response, you questioned the validity of: (1) Violation I for which the civil penalty was proposed, and requested further mitigation of the proposed civil penalty based on your identification and your corrective actions; and (2) Violations II.D.1 and II.D.2 for which no civil penalty was proposed.

While the NRC maintains that Violation I occurred as stated in the Notice, after reconsideration of the inspection findings and the information presented in your response, the NRC has decided to withdraw the proposed civil penalty.

We have also determined, for the reasons described in the enclosed Appendix, that you have not provided an adequate basis for withdrawing Violation II.D.1 or II.D.2 and, therefore, concluded that the violations occurred as stated in the Notice.

We have reviewed the corrective and preventive actions documented in your letter with regard to Violations II.A, II.B, II.C, and II.E. We note that in your response to violation II.B, you stated that your original application identified you as an additional member of your Company to be "in charge", thus precluding the need to write to the NRC to assign a new Radiation Safety Officer (RSO) when your then-existing RSO left the company. Notwithstanding your contention, the NRC notes that your possession and use of licensed radioactive material is bounded by the conditions of the license issued by the NRC. Since the RSO was designated by his name being listed on the license,

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you were required to submit a license amendment request to the NRC prior to implementing this change. Hence, you are required to submit license amendment requests to the NRC and obtain NRC approval prior to implementing changes to any of the license conditions.

With regard to Violations II.D.1 and II.D.2, your letter dated February 18, 1994, did not propose adequate corrective actions. As explained in the Appendix attached to this letter, the violations occurred as stated in the Notice. Hence, you are required to take corrective steps to avoid recurrence of these violations. We note, however, that during the enforcement conference, you stated that to prevent recurrence of Violation II.D.2, a brace bar would be installed in the bed of the pick-up truck for blocking and bracing of licensed material. This action will be examined during a future inspection of your licensed program.

We recognize that the device containing radioactive material has been transferred to another licensee authorized to receive it, and you have not yet decided whether to continue use of the device or sell it. However, in the future, should you wish to continue using nuclear devices, you must assure that the device application, manufacturer's training, NRC regulations, and license conditions are fully understood and followed by your staff. Accordingly, prior to any further receipt of licensed material, you must obtain a license amendment to properly designate your RSO and submit in writing your corrective action for Violations II.D.1 and II.D.2.

In addition, you should note that further failure to comply with NRC requirements on the part of KCE Structural Engineering, P.C., may be subject to escalated enforcement action, such as the issuance of a civil monetary penalty or an order to modify, suspend, or revoke your NRC license. The effectiveness of your corrective actions will be reviewed during a future inspection.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be placed in the NRC's Public Document Room.

Sincerely,

  
James Lieberman, Director  
Office of Enforcement

Enclosures: As Stated

cc w/encls:  
Public Document Room (PDR)  
Nuclear Safety Information Center (NSIC)  
District of Columbia

## APPENDIX

### EVALUATION OF VIOLATIONS NOT ASSESSED A CIVIL PENALTY

For violations not assessed a civil penalty, KCE Structural Engineering, P.C., (Licensee) admitted Violations II.A, II.B, II.C, and II.E., but questioned the validity of Violations II.D.1 and II.D.2. The NRC's evaluations and conclusion regarding the Licensee's response are as follows:

#### Restatement of Violations

#### II. Other Violations of NRC Requirements

D. 10 CFR 71.5(a) requires that licensees who transport licensed material outside the confines of their plants or who deliver licensed material to a carrier for transport shall comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Part 170-189.

1. 49 CFR 177.817(e) requires, in part, that the driver of a motor vehicle containing hazardous material, and each carrier using such material, ensure that the shipping paper is readily available to, and recognizable by, authorities in the event of accident or inspection. Specifically, (i) when the driver is at the vehicle's controls, the shipping paper shall be: (A) within his immediate reach while he is restrained by the lap belt; and (B) either readily visible to a person entering the driver's compartment or in a holder which is mounted to the inside of the door on the driver's side of the vehicle; (ii) when the driver is not at the vehicle's controls, the shipping paper shall be: (A) in a holder which is mounted to the side of the door on the driver's side of the vehicle; or (B) on the driver's seat in the vehicle.

Pursuant to 49 CFR 172.101, radioactive material is classified as a hazardous material.

Contrary to the above, on November 26, 1993, the licensee transported a Troxler Model 3440 (S/N 21496) portable moisture/density gauge, consisting of 8 millicuries of cesium-137 and 40 millicuries of americium-241, outside the confines of its facility at 1818 Jefferson Place, N.W., Washington, D.C. to a temporary job site at a NASA facility located in Greenbelt, Maryland, and the driver of the vehicle did not ensure that the shipping paper was readily available in the driver's compartment, as required. Specifically, the shipping paper was not readily available in that the licensee stated that it was located in a box containing the gauge, and that the box was located in the covered bed compartment of the truck. (IFS Code 05015)

## Appendix

This is a Severity Level V violation (Supplement V)

2. 49 CFR 173.448(a) requires that each shipment of radioactive material shall be secured in order to prevent shifting during normal transportation conditions.

Contrary to the above, on November 26, 1993, a Troxler Model 3440 (S/N 21496) portable moisture/density gauge, consisting of 8 millicuries of cesium-137 and 40 millicuries of americium-241, was not secured in order to prevent shifting during normal transportation conditions. Specifically, the gauge was placed in the back of a pick-up truck with a shell, without being blocked or braced, and driven to a temporary job site located at a NASA facility in Greenbelt, Maryland. (IFS Code 06014)

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

### Summary of Licensee's Response to Violation II.D.1

The Licensee contends that the shipping papers were enclosed in the licensed material shipping container in a sealed envelope noting the material, quantity and listing emergency telephone numbers. As a result of this contention, the Licensee did not propose any corrective action to prevent recurrence.

### NRC Evaluation of Licensee Response

49 CFR 177.817(e) specifically requires, in part, that when the driver is at the vehicle's controls, the shipping paper shall be within his immediate reach while he is restrained by the lap belt; and either readily visible to a person entering the driver's compartment or in a holder which is mounted to the inside of the door on the driver's side of the vehicle. On November 26, 1993, the Licensee's driver did not ensure that the shipping paper was readily available in the driver's compartment, as required by 49 CFR 177.817(e), when he transported the licensed material to a temporary job site. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

### Summary of Licensee's Response to Violation II.D.2

The Licensee contends that the device was adequately secured for shipping during transportation. The Licensee states that the carrying case was blocked in the truck bed with a bladed shovel and handle in one direction, and a steel bar blocking the device to the body of the truck on one side and the rear door on the other.

### NRC Evaluation of Licensee Response

The use of a bladed shovel and a steel bar do not qualify as adequate means of blocking and bracing during transportation of licensed material. Radioactive materials packages must be blocked and braced such that they can not change positions during conditions normally incident to transportation. Without

## Appendix

anchoring radioactive materials packages to a structural component of the truck, the shipment is prone to shifting. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

### NRC Conclusion

The NRC has determined that the Licensee has not provided an adequate basis for withdrawing Violation II.D.1 or II.D.2. Therefore, the NRC concluded that the violations occurred as stated in the Notice.

JUN 06 1994

KCE Structural Engineering, Inc.

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