

CHEMETRON CORPORATION
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VIA OVERNIGHT MAIL

June 9, 1994

Docket No. 040-8724
License No. SUB-1357
EA 93-271

Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Document Control Desk

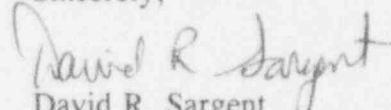
**Re: Reply and Answer to May 11, 1994
Notice of Violation and Proposed Civil Penalty**

Gentlemen:

In accordance with the instructions contained in the May 11, 1994 letter to David Sargent, President, Chemetron Corporation, from H.L. Thompson, Jr. and in the accompanying Notice of Violation and Proposed Civil Penalty, enclosed are a Reply to A Notice of Violation and Answer to Notice of Violation. These enclosures also provide the information requested in Mr. Thompson's cover letter. Please note that Chemetron Corporation is now located at 2100 New River Center, 200 East Las Olas Boulevard, Ft. Lauderdale, Florida 33301.

If you need further information, please do not hesitate to call.

Sincerely,


David R. Sargent
President

DRS:bjs

Enclosures

cc: Regional Administrator, U.S. Nuclear Regulatory Commission, Region III
Barry Koh, B. Koh & Associates, Inc.
Mark Wetterhahn, Winston & Strawn
David C. Fannin

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REPLY TO A NOTICE OF VIOLATION

(1) Admission or denial of the alleged violation.

By letter dated May 11, 1994, the NRC Staff forwarded to Chemetron Corporation ("Chemetron" or "Licensee"), a Notice of Violation and Proposed Civil Penalty (Notice) for Chemetron's failure to comply with License Condition 12. License Condition 12 required Chemetron to submit the final site remediation plan for Chemetron's Harvard and Bert Avenue sites by October 1, 1993. On October 1, 1993, Chemetron submitted the final site remediation plan, but did not include three sections: the Planned Final Radiation Survey, the Safety Analysis Report and the Radiological Assessment. The Planned Final Radiation Survey was submitted to the Staff on November 1, 1993, and the Safety Analysis Report and Radiological Assessment were submitted to the Staff on November 11, 1993.

(2) The reasons for the violation.

The final site remediation plan submitted to the NRC Staff on October 1, 1993, did not contain all of the sections listed in the Table of Contents. The reasons why those sections were not submitted with the remainder were extensively discussed at the enforcement conference (Tr. 18-20) and will only be summarized below.

As Chemetron explained during the enforcement conference, it decided to delay submitting the Safety Analysis Report and the Radiological Assessment because of circumstances having to do

with the ongoing class litigation surrounding the Bert Avenue site. At the time, the class action suit was on the critical path to a speedy cleanup of the Bert Avenue and Harvard Avenue sites. Furthermore, any substantial recovery by the plaintiffs would have affected Chemetron's ability to decommission the site.

Shortly before October 1, 1993, the presiding judge unexpectedly set a trial date for January 1994. As described at the enforcement conference, it was Chemetron's judgment that certain exhibits, including the Safety Analysis Report and the Radiological Assessment, would be used for both the remediation plan and the lawsuit. Chemetron further judged that these exhibits should be prepared by someone independent of Chemetron's remediation consultant. Chemetron immediately contacted another consultant to prepare the exhibits, but this consultant, who was unfamiliar with the details of the Bert Avenue and Harvard Avenue sites, was unable to complete the work in time for the October 1, 1994 submittal.

Regarding the Planned Final Radiation Survey, Chemetron had completed the document except for the section dealing with the factory buildings, prior to October 1, 1994. Since the NRC had voiced no objection to Chemetron's delaying the submittal of the remediation plan for the factory buildings, Chemetron

assumed that the Planned Final Radiation Survey could be withheld until it included all sections.

Shortly after the enforcement conference, Chemetron was successful in negotiating a settlement of the suit that involved paying \$5 million to the plaintiffs. Since this settlement paves the way for an expedited cleanup of the Bert Avenue and Harvard Avenue sites, Chemetron believes it has more than adequately demonstrated its commitment to meeting the NRC's objectives for timely site remediation.

(3) The corrective actions which will be taken to avoid future violations.

At the enforcement conference, David Sargent, President of Chemetron, discussed the corrective actions undertaken. He personally spoke with Chemetron's Project Manager, reemphasizing his expectations and the importance of timely and complete filings with the NRC. It was clear that the Project Manager understood the importance of the matter and the correct procedures to be utilized should a similar situation arise in the future (Tr. 26). All corrective action has now been completed.

The management actions taken by Chemetron in response to this matter were sufficient. All subsequent deadlines have been

met and responses to Staff questions have been prompt (Tr. 28). Chemetron believes that its management actions represent an appropriate response to the subject violation.

ANSWER TO A NOTICE OF VIOLATION

Extenuating Circumstances

While Chemetron does not deny that three sections of the remediation plan were submitted after October 1, 1993, there were extenuating circumstances regarding compliance with License Condition 12. A "course of dealing" between the Licensee and the NRC Staff had arisen regarding compliance with license conditions which caused Chemetron to believe that it was substantially complying with its license condition when it submitted its remediation plan on October 1, 1993. As an example, with regard to compliance with Condition 12, as discussed at the enforcement conference, when the NRC Staff was informed that a section of the remediation plan relating to building cleanup which was covered by License Condition 12 was to be delayed, no formal action to change the condition was apparently thought necessary by the Staff (Tr. 32, 41). Notification of the delay in the submittal of the three sections in the remediation plan itself was thought to be acceptable. Moreover, both earlier in this proceeding and in other similar ones, remediation plans which were less complete than the one submitted in fulfillment of a license condition identical to License Condition 12 were accepted (Tr. 29, 52-53). Chemetron reasonably relied on this "course of dealing" in submitting its remediation plan.

As discussed in the Reply to the Notice of Violation ("Reply"), the Licensee, Chemetron, was focusing on the settlement of the class action suit and the necessity for filing testimony in

that proceeding. The trial date had been unexpectedly moved to January by the presiding judge. The necessity of defending against a suit which could have affected Chemetron's financial ability to proceed with remediation overshadowed the submittal of three specific sections of the remediation plan. As discussed at the enforcement conference, the objective of having a single set of consistent calculations for NRC purposes and also for the hearing was reasonable under the circumstances and had the objective of furthering the prompt remediation of the site (Tr. 18). The willingness of the Licensee to expend \$5 million to achieve an early resolution of the litigation issues and facilitate an early remediation, demonstrates that no incentive is needed to achieve compliance with decommissioning requirements.

Errors in the Notice

Chemetron disputes the Staff's assertion contained in the letter transmitting the Notice that "the NRC Staff was unable to begin the process leading to a prompt determination of whether the health and safety of the public and workers and the environment will be protected during decommissioning and whether Chemetron's final site remediation plan will ultimately provide adequate protection of the public health and safety if properly implemented (emphasis supplied)."

The final site remediation plan consists of numerous sections and appendices. While together these sections fulfill

Chemetron's obligation to provide a complete remediation plan, many of the sections, especially the three delivered late to the NRC Staff, are reviewable separately from the main document. Certainly, the Staff was beginning its review of the sections it did receive, all of which are necessary for the health and safety findings of the Staff. The central issues facing the Staff were related to the location and concentration of the depleted uranium, cell design and groundwater and solubility issues (Tr. 24-26, 44-46). In fact, the Safety Analysis and Radiological Assessment are based on computer calculations which, in turn, rely on input parameters relating to the physical parameters, e.g., geological structure, depth of aquifer, and groundwater flow regime, associated with the site. Only after review of other sections is nearing completion can the input parameters for the computer runs be validated. Thus, review of these sections naturally occurs near the end of the review of the application.

Chemetron also contends that there would be no risk in the NRC Staff beginning its review of the material submitted on October 1, 1993, since the general subject matter and the analysis scheduled for later submittal were well known to the Staff. The risk of rejecting the remediation plan based upon the contents of the three sections was extremely small. Chemetron disagrees with the NRC Staff's claim that earlier submittals of the same information were inadequate. The previous submittals were based on preliminary information which subsequent investigations, the

results of which were submitted to the NRC Staff on October 1, 1993, showed to be satisfactory. See Tr. 23-24. Experience with other similar sites and also records associated with operations conducted at the Harvard and Bert Avenue sites known to the Staff also point to the conclusion that the offsite dose consequences of depleted uranium were insignificant, even in the unremediated state. Similarly, doses to workers and to the general public due to remediation activities are not expected to be significant. See Tr. 21-22, 24.

Finally, it is Chemetron's understanding that the NRC Staff started its review of the final site remediation plan upon its receipt and undertook the review of the later sections as they were submitted. This was confirmed by discussions with the Staff. There is no evidence that these three sections were on the critical path or the Staff's review of other sections has in any way been affected. As to the third issue, the Licensee had actual groundwater monitoring data which was included in the October 1, 1993 submittal. This was certainly more germane than predictive computer codes based upon generalized information.

The letter accompanying the Notice states "that the NRC had to prompt [Chemetron] on October 13, 1993 and issue an order on October 26, 1993 to obtain the required information." This assertion is incorrect. Chemetron had already planned for submission of the three missing sections at the time the main body of the report was being submitted. On October 13, 1994, the NRC

merely inquired as to the schedule and then issued a confirmatory order memorializing the Licensee's dates. There is no evidence that any "prompting" was necessary or that the intervention of the NRC was necessary to achieve any schedule dates.

The NRC states that the corrective action described by Chemetron at the enforcement conference reflects neither initiative, timeliness, or comprehensiveness. Chemetron takes issue with this. Since 1990, when it was reorganized with new management, Chemetron has vigorously pursued site cleanup. A comprehensive characterization program was planned and conducted which for the first time, accurately identified the nature and extent of both onsite and offsite contamination. Chemetron developed an innovative remediation plan designed to overcome the problems that led to the failures of three previous plans. Also, for the first time, Chemetron's management has been actively involved in the remediation effort. In order to assure acceptance of the plan, Chemetron, on its own initiative, undertook a comprehensive program to involve the community, its elected officials and the local regulators. All of these efforts have resulted in significant progress towards fulfilling the remediation plan at the Bert Avenue and Harvard Avenue sites.

The letter transmitting the Notice states that the base penalty was increased by 50% "because the NRC identified the violation" The fact that the sections in question were to

be submitted at a later time was clearly marked on the tabbed sections.