



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199

JUN 14 1994

Docket No. 030-20563
License No. 52-21368-01
EA 94-063

Mr. William Vázquez-Agrait
Post Office Box 1073
Mayagüez, Puerto Rico 00709-1073

Dear Mr. Vázquez:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$750
(NRC INSPECTION REPORT NO. 52-21368-01/94-01)

This refers to the Nuclear Regulatory Commission (NRC) inspection conducted by Mr. H. Bermudez of this office on March 24, 1994. The inspection included a review of the activities authorized under your license with respect to radiation safety and compliance with NRC regulations and the conditions of your license. The inspection identified an apparent failure to control and maintain constant surveillance of licensed materials that were not in storage in an unrestricted area. Several other violations were also identified during the inspection. The report documenting this inspection was sent to you by letter dated April 15, 1994. An enforcement conference was held on May 19, 1994, at your facility in Mayagüez, Puerto Rico, to discuss the violations, their cause, and your corrective actions to preclude recurrence. A list of the enforcement conference participants is enclosed.

The violation in Part I of the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) involved the failure to control and maintain constant surveillance of licensed radioactive materials located in an unrestricted area. On the day of the inspection, March 24, 1994, the senior technologist, who had been in the field using a portable moisture/density gauge, was called to your office to meet with the inspector. The technologist placed the gauge on the back of an open-bed pick up truck and proceeded to the facility to meet the inspector. Upon arriving at the facility, the technologist parked the vehicle near the facility. The transport package containing the gauge was left unattended in the bed of the truck. After approximately 90 minutes, the inspector and the technologist went to the truck to inspect the transport package and gauge. The inspector noted that the package was not secured against unauthorized removal and was unlocked. In addition, the inspector noted that the lock on the gauge that prevents accidental exposure of the radioactive source was not functional.

This NRC-identified violation is of significant safety and regulatory concern because of the potential for the loss of control of licensed material and the associated hazards to the public health and safety. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, this violation has been categorized at Severity Level III.

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During the enforcement conference, you and your staff forthrightly discussed several causes that contributed to this violation, including the fact that the technologist had failed to take the time to secure the gauge properly, that training in this area had been inadequate, and that proper management oversight had not been appropriately exercised to assure complete and continuous compliance with regulatory requirements.

The staff also recognizes that after the NRC identified this violation, immediate corrective action was taken to properly secure the licensed material. In addition, during the enforcement conference, you outlined several other long term corrective actions to preclude recurrence and to ensure compliance with regulatory requirements.

To emphasize the importance of ensuring the control of licensed material and complying with the provisions of 10 CFR 20.1802, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$750 for the Severity Level III violation described above and in the enclosed Notice. The base value of a civil penalty for a Severity Level III violation is \$500. The civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy were considered as follows.

Escalation of 50 percent was applied for the factor of identification because the violation was identified by the NRC. Mitigation of 50 percent was warranted for corrective action because of the immediate corrective action to secure the licensed material and also because of your long term corrective actions that included establishing procedures requiring gauges to be placed in secure storage when not personally attended, additional training for your staff relative to controlling licensed material, preparation of a lessons learned presentation on review of the causes and contributing factors of the incident, and a review of the facility environment to enhance security for licensed material. Escalation of 50 percent was applied for licensee performance based on previous inspections which identified violations similar to those in this enforcement action. The other factors were considered and were not applicable. Therefore, the base civil penalty has been increased by 50 percent.

The violations in Part II of the enclosed Notice included five violations related to the conduct of your radiation safety program. Violation II.A involved licensed material being used by an individual who was not supervised as required nor had he completed any of the specified training courses. This violation, as well as Violation II.B discussed below, are significant in that they were repeat violations. The NRC expects its licensees to institute effective corrective actions and to learn from their past failures. Although NRC does not normally consider monetary civil penalties for Severity Level IV violations, the Enforcement Policy states that such penalties may be imposed for Severity Level IV violations that are similar to previous violations for which the licensee did not take effective corrective action. In this case, we have decided not to propose a civil penalty for Violations II.A and II.B because the individual involved in Violation II.A had been trained by the technologist relative to requirements associated with the use of licensed material and he has been scheduled to attend the specified training courses in

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the near future. Violation II.B is also considered significant because it is a repeat violation related to the transportation of licensed materials without shipping papers. In this particular case, you stated that there was a misunderstanding relative to the requirement to carry shipping papers and you have implemented corrective action to preclude recurrence by ensuring that multiple copies of shipping papers are available for the technologists. The remaining violations involved the failure to test the lock of a package containing licensed material before transport, failure to conduct transportation safety training, and failure to wear a film badge. These violations indicate that additional management oversight is required for your radiation safety program.

In addition, the inspection identified other activities that violated NRC requirements that will not be subject to enforcement action because your efforts in identifying and/or correcting the violations met the criteria for enforcement discretion specified in Section VII.B of the Enforcement Policy. The two non-cited violations involved the failure to exchange film badges at a monthly frequency and the failure to maintain dosimetry records. These violations were discussed in Section 3 of the referenced inspection report.

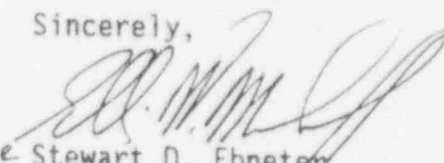
You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and 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 enclosures will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy or proprietary information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide your legal basis to support your request for withholding the information from the public.

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. No. 96-511.

Should you have any questions concerning this letter, please contact us.

Sincerely,



For Stewart D. Ebnetor
Regional Administrator

Enclosures: (See page 4)

Mr. William Vázquez-Agrait

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Enclosures:

1. Notice of Violation and Proposed
Imposition of Civil Penalty
2. List of Attendees

cc w/encls:

Commonwealth of Puerto Rico