

ENCLOSURE 1

NOTICE OF VIOLATION  
AND PROPOSED IMPOSITION OF CIVIL PENALTY

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

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

During an NRC inspection conducted on March 24, 1994, 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, 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:

I. Violation Assessed a Civil Penalty

10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, an unrestricted area is an area to which access is neither limited nor controlled by the licensee.

Contrary to the above, on March 24, 1994, licensed material consisting of approximately 10 millicuries of cesium-137 and 50 millicuries of americium-241 contained in a portable moisture/density guage was located on the back of a pick-up truck parked on the street near the licensee's facility, an unrestricted area, and was not controlled by nor under constant surveillance of the licensee.

This is a Severity Level III violation (Supplement IV). (01013)  
Civil Penalty - \$750

II. Violations Not Assessed a Civil Penalty

A. Condition 12 of License No. 52-21368-01 requires that licensed material be used by individuals who are directly supervised by certain designated individuals or who have completed specified training courses.

Contrary to the above, between 1991 and March 24, 1994, licensed material was used by an individual who was not supervised as required nor had he completed any of the specified training courses.

This is a repeat Severity Level IV violation (Supplement VI). (02014)

B. 10 CFR 71.5 requires that each licensee who transports licensed material outside the confines of its plant or other place of use comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170-189.

1. 49 CFR 172.200(a) requires, with exceptions not applicable here, that each person who offers a hazardous material for transportation describe the hazardous material on the shipping paper in the manner required by Subpart C of 49 CFR Part 172. Pursuant to 49 CFR 172.101, radioactive material is classified as a hazardous material.

Contrary to the above, on and before March 24, 1994 two licensee individuals transported licensed radioactive materials outside the confines of its plant without shipping papers.

This is a repeat Severity Level IV violation (Supplement V). (02024)

2. 49 CFR 173.475 requires, in part, that before each shipment of any radioactive materials package, the shipper ensure by examination or appropriate tests that each opening of the containment system through which the radioactive content might escape is properly closed and sealed.

Contrary to the above, on March 24, 1994, the licensee failed to examine or test the lock of a package containing licensed radioactive materials to ensure it was properly closed before transporting it on public roads.

This is a Severity Level IV violation (Supplement V). (02034)

3. 49 CFR 172.702 requires, in part, that hazardous materials licensees train and test employees in the transportation safety subjects covered in 49 CFR 172.704. Such subjects include regulatory requirements associated with transport of hazardous materials, identifications of hazardous materials and emergency response during transportation accidents.

Contrary to the above, as of March 24, 1994, the licensee had not trained employees who routinely transport a portable nuclear gauge containing hazardous materials in the transportation safety subjects covered in 49 CFR 172.704.

This is a Severity Level IV violation (Supplement V). (02044)

- C. Condition 17 of License No. 52-21368-01 requires, in part, that the licensee conduct its program in accordance with the statements and procedures contained in a letter dated November 4, 1988.

Item 3 of the Nuclear Safety Procedures contained in the licensee's letter dated November 4, 1988 requires that all users carry their film badges when using the nuclear devices.

Contrary to the above, between 1991 and March 24, 1994, a user was not carrying his film badge when using a nuclear device.

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Specifically, the user was carrying another user's film badge because he had not been assigned one.

This is a Severity Level IV violation (Supplement VI). (02054)

Pursuant to the provisions of 10 CFR 2.201, Mr. William Vázquez-Agrait, (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 Imposition of Civil Penalty (Notice). This 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 or a Demand for Information may be issued as to 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 addressed 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 the cumulative amount of the civil penalties if more than one civil penalty is proposed, 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 an "Answer to a Notice of Violation" and may: (1) deny the violation 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 VI.B.2 of 10 CFR Part 2, Appendix C, 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.

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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. 2282c.

The response noted above (Reply to 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, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II, Atlanta, Georgia.

Dated at Atlanta, Georgia  
this 14 day of June 1994

ENCLOSURE 2

ATTENDEES PARTICIPATING IN THE ENFORCEMENT CONFERENCE  
HELD ON MAY 19, 1994, MAYAGUEZ, PUERTO RICO

Nuclear Regulatory Commission:

- B. S. Mallett, Deputy Director, Division of Radiation Safety and Safeguards
- B. Uryc, Director, Enforcement and Investigation Coordination Staff
- H. Bermúdez, Senior Radiation Specialist, Nuclear Materials Safety and Safeguards Branch, Division of Radiation Safety and Safeguards

Licensee:

- W. Vázquez Agrait, Owner
- E. Vicéns, Senior Technologist
- A. Ramos, Technologist
- V. Marques, Office Assistant