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(RDS)

July 10, 1991

Docket No. 030-18173
License No. 13-16961-02
EA 91-078

Materials Inspection and
Testing, Incorporated
ATTN: Mr. Ralph Holler
President
3807 Goshen Road
Fort Wayne, Indiana 46818

Dear Mr. Holler:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$1,750 (NRC INSPECTION REPORT NO. 030-18173/91001)

This refers to the routine safety inspection conducted on June 5 and 6, 1991, at Materials Inspection and Testing, Incorporated, Fort Wayne, Indiana. During the inspection, violations of NRC requirements were identified and a copy of the inspection report was sent you on June 21, 1991. On June 26, 1991, an enforcement conference was held in the Region III office between you, and Mr. James Holler of your staff, and Mr. William L. Axelson, Deputy Director, Division of Radiation Safety and Safeguards, and other members of the NRC staff.

The violations, which are described in the enclosed Notice of Violation, include: (a) three employees, who routinely use moisture/density gauges containing NRC licensed byproduct material, were not trained in the various aspects of radiation safety applicable to the operation of a nuclear gauge; (b) a Radiation Safety Officer has not been employed since December 1989; (c) a radiation worker received a total radiation exposure of 2.05 rems during the fourth quarter of 1986 which is in excess of the NRC limit of 1.25 rem per calendar quarter and that exposure was not evaluated or reported to the NRC; (d) an employee who routinely used a nuclear moisture/density gauge had not been issued personal dosimetry since at least 1989; (e) sealed sources were not leak tested between October 23, 1989, and March 11, 1991; (f) inventory records of sealed sources were not maintained since at least 1989; (g) radiation exposure records were not maintained during the period October 1989 to May 1991; (h) shipping papers did not accompany radioactive material in transit and the packages of radioactive material (nuclear gauges) were not adequately blocked and braced so they could not change position during conditions normally incident to transportation; and (i) certain regulatory documents were not posted as required. These violations, taken collectively, demonstrate a significant lack of management attention to, and control of, activities authorized by your NRC license. Therefore, in accordance with the "General Statement of Policy and

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Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C (1991), the violations are classified in the aggregate as a Severity Level III problem.

The root causes of the violations and the subsequent corrective actions were discussed during the June 26, 1991, enforcement conference. The NRC recognizes that corrective actions have been initiated and appear acceptable. The major factor contributing to the violations appeared to be the laxity by which you approached the supervision of radiation safety practices. Principally, you did not provide adequate oversight to the radiation safety program, as demonstrated by: (1) the failure to replace the Radiation Safety Officer in December 1989, following the termination of his employment; (2) allowing workers, who were not trained in radiation safety, to operate the nuclear gauges; and (3) the failure to evaluate an overexposure to one of your workers. It was also noted during the enforcement conference that your company experiences a significant seasonal expansion in its moisture/density gauge program; however, it does not appear that your management oversight of radiation safety keeps pace with this increased workload.

The violations described in the enclosed Notice represent a serious breakdown in the management of your radiation safety program. Three of the violations were repetitions of the violations identified during an NRC inspection in 1986, which indicates that your corrective actions for those earlier violations were neither effective nor lasting. The NRC license issued to Materials Inspection and Testing, Inc., entrusts great responsibility to protect the health and safety, not only of the public but also of your employees, by assuring that all requirements of the NRC license are met and that potential violations of NRC requirements are not only quickly identified, but are also immediately corrected. The occurrence of the numerous violations of NRC requirements, many of which involved multiple examples and continued for a significant period of time, is indicative of ineffective control and oversight of your radiation safety program.

To emphasize the importance of complying with license and regulatory requirements and ensuring effective management oversight of licensed programs, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$1,750 for the Severity Level III problem.

The base value of a civil penalty for a Severity Level III problem is \$500. The civil penalty adjustment factors in the Enforcement Policy were considered and the amount of the civil penalty was increased 250 percent. The civil penalty was initially increased by 50 percent since all of the violations were identified by the NRC, but the violations should have been identified and corrected through internal reviews conducted by licensee management. The civil penalty adjustment factors for past performance and prior notice of similar events were combined and the civil penalty was increased by 100 percent since

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you had prior notice of the potential for violations of this nature from the results of the September 9-11, 1986, NRC inspection of your license. Specifically, three of the violations identified during the September 1986 inspection were identified again during the current inspection. The repeated violations were: (1) your failure to perform leak tests on sealed sources every six months; (2) your failure to maintain inventory records; and, (3) your failure to maintain complete records of personnel radiation exposures. These past violations combined with the specific precautionary and instructional information that was provided to you by the NRC in the form of NRC Information Notices (Information Notices 90-35, "Transportation Requirement for Type A Quantities of Radioactive Material;" 88-10, "Lack of Management Controls over Licensed Programs;" 87-55, "Portable Moisture/Density Gauges - Recent Incidents;" 87-31, "Blocking, Bracing and Securing Radioactive Material in Transport;" and, 86-67, "Portable Moisture/Density Gauges, Recent Incidents and Common Violations of Requirements for Use, Transportation and Storage") gave you ample notice of the various problems in the use of nuclear material in moisture/density gauges and should have caused you to carefully evaluate your NRC licensed program for similar weaknesses. The amount of the civil penalty was increased an additional 100 percent for the duration of the violations. For example, the violation associated with the lack of radiation safety training for two of your nuclear gauge users lasted for at least five years. Regarding corrective actions, an adjustment to the civil penalty was not made as your corrective actions, while adequate to return you to compliance with NRC requirements, were not extensive. More extensive actions could have included establishing programs: to audit gauge users while they work in the field to determine their routine compliance with NRC regulations, the conditions of your NRC license, and the requirements of the U. S. Department of Transportation; to conduct refresher radiation safety training; and, to conduct periodic reviews of the various management aspects of your radiation safety program, including the performance of the Radiation Safety Officer. The remaining factor in the Enforcement Policy, multiple occurrences, was also considered and no further adjustment to the base civil penalty is considered appropriate.

Our inspection also identified one other issue as a potential violation of NRC requirements. That potential violation pertained to your failure to maintain a record showing that the one individual who had received the required radiation safety training had actually received that training. You provided a copy of that record at the enforcement conference; therefore, this issue is not being cited as a violation of NRC requirements.

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 to the specific responses required by the enclosed Notice, you are also requested to provide within the same period of time a written evaluation of the managerial aspects of your radiation safety program and determine if managers are providing sufficient attention to the NRC

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licensed program to ensure your corrective actions are thorough and lasting. After reviewing your responses to this letter and 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 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. No. 96-511.

Sincerely,

Carl J. Paparella for
A. Bert Davis
Regional Administrator

Enclosure: Notice of Violation
and Proposed Imposition of
Civil Penalty

cc w/enclosure:
J. Lieberman, OE
DCD/DCB (RIDS)

*copy to
CR 2-078*
RIII
[Signature]
Weil, Th
7/1/91

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RIII *ja*
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Enforcement Coordinators

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F. Ingram, GPA/PA

D. Williams, OIG

B. Hayes, OI

V. Miller, SP

E. Jordan, AEOD

OE:ES

OE:Chron

OE:EA (2)

DCS

State of Indiana

RAO:RIII

SLO:RIII

PAO:RIII

IMS:RIII