



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

January 18, 1995

EA 94-096

Nuclear Pharmacy of Idaho, Inc.
ATTN: Mr. Ned Gregorio
6053 Corporal Lane
Boise, Idaho 83702

SUBJECT: RECISION OF PROPOSED CIVIL PENALTY
(NRC INSPECTION REPORT NO. 030-32223/94-02)

Dear Mr. Gregorio:

This is in response to your October 18 and October 23, 1994, letters to the NRC, in which you requested full mitigation of a \$7,500 civil penalty that had been proposed by the NRC in a Notice of Violation (NOV) on August 23, 1994. The proposed civil penalty was based on a violation of 10 CFR 20.106(a), regarding releases of iodine-131 from your facility in calendar year 1993.

In your letters, you admitted that iodine-131 releases to the stack at your facility exceeded the limit in 10 CFR 20.206(a) for calendar year 1993, but indicated that the releases from the stack may have been within the regulatory limit based on deposition of iodine-131 on the interior surfaces of the exhaust stack. You also stated that the civil penalty was not necessary since corrective actions had begun before the NRC inspection that identified the violation.

The NRC has considered your response. As to your argument that a civil penalty is not necessary because corrective actions had begun before the inspection, civil penalties are assessed to deter *future* non-compliance and to emphasize the need for lasting corrective action. The deterrent effect is achieved when licensees, in order to avoid violations and civil penalties, take prompt and effective action to address problems in advance of any potential violation so that the violation does not occur and the NRC does not have to become involved.

In reconsidering the facts of this case, the NRC staff has determined that the violation is more appropriately categorized at Severity Level IV instead of Severity Level III, and this letter amends the record of this enforcement action accordingly. This decision was based on a reconsideration of the violation with respect to the examples in Supplement IV of the NRC's Enforcement Policy and the new release limit for iodine-131 in 10 CFR 20.1302(b)(2)(i), which became effective January 1994. The policy was revised to coincide with the revision to 10 CFR Part 20 and currently classifies releases that exceed the limits by a factor of two as Severity Level III violations. Since NPI's releases in calendar year 1993 were approximately twice the limit, and may have been less if any reduction is assumed for iodine deposition, the NRC has reduced the severity level of the violation in this specific case. Civil monetary penalties are not normally considered for

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violations categorized at Severity Level IV and, therefore, the civil penalty proposed in the NRC letter dated August 23, 1994, is being rescinded. Our decision was not based on the revised estimates in your October 23, 1994 response. We are requesting further information concerning your calculations and assumptions as indicated below.

You indicated in your October 23, 1994 letter that you believe the releases from the stack were within regulatory limits. If you would like the NRC staff to consider withdrawing the violation, you should provide the following information:

1. Information to support the correction factor that you are using for concentration at the entrance to the stack vs. concentration at the release point. It is not clear that this factor was determined for the actual stack at the facility where the releases occurred and, if not, how and whether variables such as stack configuration, airflow, etc. were taken into account. Please include in your response the flow rate for the duct at the facility where the releases occurred. Additionally, please provide your rationale for assuming that iodine deposited in the ductwork remains there and does not re-enter the stack effluent with time.
2. Your rationale for use of the Code that you selected. We note that this Code was originated for use in reactor situations where a variety of nuclides are present in a single, simultaneous release. The Code also assumes that the internal surfaces of the duct readily absorb iodine and that there is no re-entrainment of the iodine after plateout.

This information should be addressed to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Since your October 18, 1994 letter indicates that you are using the correction factor that you developed to arrive at your current actual release concentrations, it is essential that you resolve the issue of whether or not the use of this factor is appropriate. Also, depending on the type of charcoal filter that you are now using, you should be aware that the efficiency of the filter may vary considerably over time. You should be able to demonstrate that your filter *consistently* provides any reduction that you are taking credit for.

The NRC recognizes the corrective actions that you have taken since April 1994, including the purchase and installation of a filtered glove box to further reduce iodine-131 emissions, and will evaluate the effectiveness of these corrective actions during future inspections.

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room. If you have any questions about this matter, please contact Linda Howell of my staff at 817/860-8213.

Sincerely,


L. J. Callan
Regional Administrator

Docket No. 030-32223
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cc: State of Idaho
EPA Region 10

Nuclear Pharmacy of Idaho, Inc.

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