



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 10, 1994

EA 94-179 and EA 94-226

Ms. Marlene Yourstone, President  
Environmental Testing Laboratories, Inc.  
512 Route 9  
Forked River, New Jersey 08036

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$3,000; NOTIFICATION OF CONSIDERATION OF THE IMPOSITION OF DAILY CIVIL PENALTIES; AND ORDER TO CEASE AND DESIST USE AND POSSESSION OF REGULATED BYPRODUCT MATERIAL

Dear Ms. Yourstone:

Environmental Testing Laboratories, Inc. (ETL) is the holder of expired Byproduct Materials License No. 29-19310-02 (license) which was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on July 31, 1986. The license authorized the possession and use of nickel-63 in plated sources or foils. The license expired on August 31, 1991. The licensee was required to comply with the Commission's requirements set forth in 10 CFR 30.36, "Expiration and termination of licenses", which are further described below. Additionally, 10 CFR 30.3 provides, with exceptions not applicable to this case, that no person shall possess byproduct material except as authorized in a specific or general license.

Our records indicate that you have not met these requirements, even though the NRC provided you ample notice of your need to comply with these requirements and opportunities to achieve compliance. Specifically, you were informed by NRC via: (1) several telephone conversations between November 1991 and October 26, 1994; (2) a letter dated November 13, 1991, which forwarded an NRC Form 314 and instructions; (3) a Notice of Violation issued by NRC Region I on January 14, 1993, for the possession of byproduct material without a license; and (4) a June 7, 1994 letter which informed you that ETL was in continuous noncompliance with NRC regulations for possessing byproduct material without a valid NRC license and that it must transfer the byproduct material to an authorized recipient or inform NRC of the reason why it was unable to do so. As of this date, ETL has not responded to the letter, informed NRC that it has transferred the byproduct material to an authorized recipient, or applied for and obtained an NRC license.

Your actions represent deliberate violations of NRC requirements. The violations, which are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice), include: (a) possession of byproduct material with an expired license, contrary to 10 CFR 30.3; and (b)

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failure to comply with 10 CFR 30.36(c)(1), which requires, in part, that byproduct material be properly disposed of and a certification thereof provided to the NRC on or before the expiration date specified on the license.

The Atomic Energy Act of 1954, as amended (Act), limits possession of byproduct material to those who possess a valid NRC license. Deliberate violations of NRC requirements are a significant regulatory concern because the conduct of licensed activities in accordance with the Act and the Commission's requirements depends in large part on the integrity of individuals conducting NRC-licensed activities. These failures are particularly serious because, despite the numerous communications to you by the NRC, you failed to take appropriate corrective actions. Therefore, the violations described in the enclosed Notice have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C.

To emphasize the unacceptability of possessing byproduct material with an expired license and the need for compliance with Commission requirements, I am issuing the enclosed Notice proposing a civil penalty in the amount of \$3,000 for the violations set forth in the enclosed Notice.

The base civil penalty amount for a Severity Level III problem is \$500. The Civil Penalty Adjustment Factors in the Enforcement Policy were considered and the base civil penalty was escalated as follows: (1) 50% escalation based on the identification factor because the violations were identified by the NRC; (2) 50% escalation based on the corrective action factor for your lack of corrective action; (3) 100% escalation based on the prior opportunity factor because of the notice that NRC provided as described above; and (4) 100% escalation based on the duration factor because the violations occurred over a long period of time. The remaining adjustment factors were considered and no further adjustment was considered appropriate. In addition, to emphasize the importance of maintaining a valid license or properly disposing of NRC-licensed materials, particularly after the NRC directed and reminded you to do so, the NRC is exercising discretion in accordance with Section VII.A of the Enforcement Policy and increasing the base civil penalty by an additional 200 percent. Therefore, cumulatively, the \$500 base civil penalty has been increased by a total of 500%, resulting in the proposed \$3,000 civil penalty.

In addition to the proposed civil penalty assessed herein, the NRC is also issuing the enclosed Order to Cease and Desist Use and Possession of Regulated Byproduct Material. Accordingly, you must: (1) cease and desist all use of byproduct material and transfer it to an authorized recipient; (2) prior to the transfer, continue to maintain safe control over the byproduct material; (3) within 30 days of the date of the Order, transfer the remaining byproduct material in your possession to an authorized recipient; (4) notify the NRC Region I Office of the details of the proposed transfer two days prior to the

actual transfer; and (5) within seven days following completion of the transfer, provide to the Regional Administrator, NRC Region I: (a) confirmation in writing and under oath (NRC Form 314) that the nickel-63 has been transferred, (b) a copy of the survey performed in accordance with 10 CFR 30.36(c)(1)(v), and (c) a copy of the certification from the authorized recipient that the byproduct material has been received.

Further, given the regulatory significance of this case, if ETL does not transfer or promptly dispose of the material as provided in the enclosed Order, you are hereby notified that the NRC intends to consider daily civil penalties of \$500 per day. Daily civil penalties are justified because you were clearly aware that you were in violation of NRC requirements, and yet you failed to take effective corrective actions. If assessed, the daily civil penalty would continue until the byproduct material is properly transferred or disposed of, and would be imposed for each 30-day-period at \$15,000 per period. Prior to commencing the imposition of daily civil penalties, the NRC staff will provide ETL with a grace period of 30 days, that is, if ETL transfers or properly disposes of its byproduct material within 30 days of the date of this letter, daily civil penalties would not be assessed.

You are required to comply with the applicable provisions of 10 CFR Part 20 until the byproduct material is transferred to an authorized recipient. You must comply with this Order. Your response to this Order will be reviewed to determine whether further enforcement action will be taken against you pursuant to 10 CFR 30.10, "Deliberate misconduct". Your failure to comply with this Order may result in additional civil sanctions. Your willful failure to comply with the Order may also result in criminal sanctions.

If you have any questions concerning this Order, please contact Mr. James Lieberman, Director, Office of Enforcement, at (301) 504-2741.

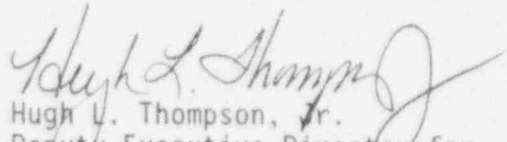
In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC's Public Document Room (PDR). To the extent possible, your response should not contain any personal privacy or proprietary information so that it can be 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 the legal basis to support your request for withholding the information from the public.

Environmental Testing  
Laboratories, Inc.

- 4 -

The responses directed by this letter and the enclosed Notice and Order 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,

  
Hugh L. Thompson, Jr.  
Deputy Executive Director for  
Nuclear Materials Safety, Safeguards,  
and Operations Support

Docket No. 030-29343  
License No. 29-19310-02 (Expired)

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. Order to Cease and Desist Use and Possession of Regulated Byproduct Material

cc w/encl:  
Public Document Room (PDR)  
Nuclear Safety Information Center (NSIC)  
State of New Jersey