

July 1, 1991

Docket No. 030-15115
License No. 37-18456-01
EA 91-077

MEMORANDUM FOR: James Lieberman, Director, OE

FROM: Thomas T. Martin, Regional Administrator, Region I

SUBJECT: PROPOSED CIVIL PENALTY - CONSTRUCTION
ENGINEERING CONSULTANTS, PITTSBURGH,
PENNSYLVANIA

Enclosed for your review and concurrence is a proposed enforcement action (Letter and Notice of Violation and Proposed Imposition of Civil Penalty) for a violation identified during an NRC inspection conducted on May 22-23, 1991 at the subject licensee's facility, as well as at a field site at the Greater Pittsburgh Airport. The violation, which is described in detail in the enclosed proposal and inspection report, involved the failure of radiographers (one of whom is also the Radiation Safety Officer for this small radiography operation) to use alarm ratemeters during the performance of radiography. The requirement to have and use such ratemeters became effective on January 10, 1991 and at the time of the inspection, the licensee had not purchased any alarm ratemeters.

The enclosed enforcement proposal for this violation includes classification of the violation at Severity Level III in accordance with Section C.9 of Supplement VI of the Enforcement Policy, and issuance of a \$1,250 civil penalty. Although you delegated to the Regional Administrator, on December 6, 1990, the authority to issue materials cases without your concurrence, I have decided, pursuant to Section 3(a)(3) of your delegation memorandum, to send this proposal to you for your review of the details of the application of the "prior notice" escalation factor for which no adjustment is proposed in this case.

In this case, the Region recommends escalation of the civil penalty based on the NRC identification of the violation because (as stated in Section V.B.1 of the policy), the licensee should have reasonably discovered the violation before the NRC identified it, given the prior notification it was sent from the NRC in the Federal Register Notice and an NMSS

PROPOSED ENFORCEMENT ACTION
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Newsletter of this new requirement. Since prior notice of the new requirement is essentially considered in the analysis of this factor, additional escalation based on this "prior notice" consideration would constitute a "double hit" and thus is not warranted. In addition, even if warranted, escalation based on the "prior notice" factor in this case may not be in strict accordance with the enforcement policy, in that, (1) although the enforcement policy states that a civil penalty may be escalated if the licensee had prior notice of problems, the licensee, in this case, did not have prior notice of problems, but rather prior notice of a new requirement (via the Federal Register and an NMSS Newsletter (copy enclosed) issued in 1990 before the requirement became effective); (2) prior notice was not applied in the numerous civil penalty cases issued after the NRC notified licensees of the new 10 CFR Part 35 requirement which became effective a few years ago; and, (3) it is our understanding that the original purpose of the NMSS newsletter was to strengthen communication with licensees and not to provide an opportunity to make future enforcement actions tougher.

In summary, an application of the prior notice factor in this case would be "precedent setting" in that it is the first case, to our knowledge, when the "prior notice" escalation has been applied based on an NMSS Newsletter, and is also the first case, to our knowledge, that the escalation would be based on prior notice of a new requirement.

Thomas T. Martin
Regional Administrator

Enclosures:

1. Proposed Letter and Notice of Violation and Proposed Imposition of Civil Penalty
2. NRC Inspection Report No. 91-001
3. Enforcement History
4. NMSS Newsletter

cc w/encls:

Enforcement Directors, RII-RIII

Enforcement Officers, RIV-RV

J. Goldberg, OGC

R. Cunningham, NMSS

B. Summers, OE, (3)

K. Abraham, PAO

D. Screnci, FPAO

The Regional Counsel has no legal objection with this proposal Yes ☒ No ☐

RI:OE
Holody

6/26/91

RI:DRSS
Swetland

6/26/91

RI:DRSS
Bellamy

6/27/91

RI:DRSS
Knapp

6/27/91

RI:RC
Smith

6/27/91

RI:DRA
Kane

6/27/91

RI:RA
Martin

6/28/91