

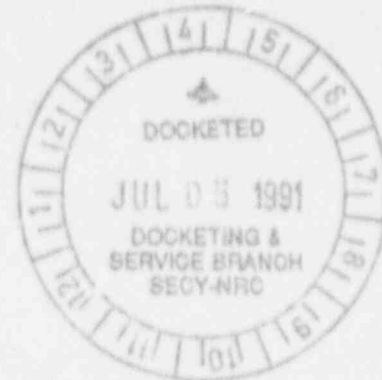


OFFICE OF THE
SECRETARY

DOC/LET NUMBER

BYPRODUCTS 30-10749-CIVP

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555



July 1, 1991

MEMORANDUM FOR: B. Paul Cotter, Jr.
Chief Administrative Judge
Atomic Safety and Licensing Board Panel

FROM: Samuel J. Chilk, Secretary

SUBJECT: REQUEST FOR HEARING FROM MIDWEST INSPECTION
SERVICE, LTD.

Attached is a request for a hearing submitted by Midwest Inspection Service, Ltd. This request was filed in response to an Order imposing a civil monetary penalty on Midwest Inspection Service, Ltd. Notice of the Order Imposing Civil Monetary Penalty was published in the Federal Register at 56 Fed. Reg. 22894-22896 (May 17, 1991) (copy attached).

The request for a hearing is being referred to you for appropriate action in accordance with 10 C.F.R. Sec. 2.772(j).

Attachments: as stated

cc: Commission Legal Assistants
OGC
EDO
NMSS
OE
Donald Paschen

9107150094 910701
NMSS LIC30
48-16296-01 PDR

D502



MIDWEST INSPECTION SERVICE, LTD.

*Nondestructive Inspection
The #1 For Your Quality*

June 5, 1991

Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, D.C. 20555

Gentlemen:

Midwest Inspection Service, Ltd., License number 48-16296-01, respectfully requests and enforcement hearing under the terms set forth of Docket number 030-10749; EA90-152, Item V of Document dated May 9, 1991.

The issue I wish to be considered at this hearing is sub-paragraph (b) of Item V. I will protest that the penalty should not be sustained for the following reasons:

- 1- I have admitted that full attention to detail, was not performed. This should not be construed as total disregard for License Conditions.
- 2- Of the seven violations identified between July 24, 1990 and August 8, 1990, five (5) were a first time violation and two (2) were identified as repeat violations.
- 3- The basis for the penalty escalation contained in paragraph six of the October 11, 1990 correspondence is excessive. I reference action of; EA69-165; EA90-035; Ea90-001.

It is my contention that, the appropriate penalty for the violations should have been in the \$2,500.00 to \$3,750.00 area. This would be consistent with previous enforcement actions.

Sincerely,

Donald Paschen

DP/pva

CC: Assistant General Counsel for Hearings and Enforcement
Regional Administrator, NRC Region III

Committee name	St. address and room	Times	Dates
Proposed Review Panel for Undergraduate Science, Engineering, & Mathematics Education.	Holday Inn—The Governor's Govern Hotel, House Hotel, Washington, DC.	7:30 p.m.—8 p.m. 8 a.m.—6 p.m. 8 a.m.—4 p.m.	06/08/91 06/10/91 06/11/91

Agenda: Leadership Laboratory
Development Review Prop.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11705 Filed 5-16-91; 8:45 a.m.]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on May 29, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, May 29, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review the Draft Safety Evaluation Reports (DSERs) corresponding to chapters 7, 11, 12, and 13 of the Electric Power Research Institute's (EPRI's) Requirements document for evolutionary designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of EPRI, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the

meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-0901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 6, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-11693 Filed 5-16-91; 8:45 a.m.]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Meeting

The Subcommittee on Advanced Boiling Water Reactors will hold a meeting on May 30, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Thursday, May 30, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review the GE/ABWR design detail and layout.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions

with representatives of General Electric, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-0901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 6, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-11694 Filed 5-16-91; 8:45 a.m.]

BILLING CODE 7590-01-M

[Docket No. 030-10749, License No. 48-16296-01; EA 90-152]

Midwest Inspection Services, Ltd.,
Green Bay, WI; Order Imposing Civil
Monetary Penalty

I
Midwest Inspection Services, Ltd. is the holder of Byproduct Materials License No. 48-16296-01 initially issued by the Nuclear Regulatory Commission (NRC or Commission) on May 23, 1975. The license was most recently amended in its entirety on March 18, 1988, and is due to expire on October 31, 1992. The license authorizes the Licensee to use iridium-192 in the conduct of industrial radiography and cesium-137 for survey instrument calibration in accordance with the conditions specified therein.

II
An inspection of the Licensee's activities was conducted on July 24 through August 8, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 11, 1990. The Notice stated the nature of the

violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letter dated December 21, 1990. In its response, the Licensee admitted Violations A., B., D., and G., denied Violations C. and E., denied one example given in Violation F., and neither admitted or denied the other example in Violation F. The Licensee protested the civil penalty in whole and requested remission of the penalty.

III

After consideration of the Licensee's response and the statement of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that five of the seven violations occurred as stated, that one violation (Violation E.) should be withdrawn, that one example of another violation (Violation F.) should be withdrawn, and that the \$10,000 penalty proposed for the violations in the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced by \$2,796.57 to \$8,571.43.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (ACT), 42 U.S.C. 2282, and 10 CFR 2.175, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of \$8,571.43 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this

Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation C. of the Notice referenced in section II above, and in Violation F. of the Notice as amended in the appendix to this Order, and

(b) whether, on the basis of these violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 9th day of May 1991.

For the Nuclear Regulatory Commission:
James Lieberman,
Director, Office of Enforcement.

Appendix

Evaluations and Conclusions

On October 11, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on July 24 through August 8, 1990. Midwest Inspection Service, Ltd. (Licensee) responded to the Notice in letters dated December 21, 1990 and March 27, 1991. In its responses, the Licensee admitted Violations A., B., D., and G., denied Violations C. and E., denied one example given in Violation F., and neither admitted nor denied the other example in Violation F.

In addition, the Licensee protested the civil penalty in whole and requested remission of the civil penalty. The NRC's evaluation and conclusions regarding the Licensee's requests are as follows:

I. Restatement of Violation C

License Condition No. 20 requires that the Licensee conduct its program in accordance with statements, representations, and procedures contained in the application dated April 30, 1980 and a letter dated May 1, 1981. Attachment 6(g) of the referenced letter requires that the Licensee conduct quarterly field inspections of radiographic personnel.

Contrary to the above, a quarterly field inspection of a radiographer's assistant was not conducted in the second quarter of 1990, although the radiographer's assistant performed radiographic work on at least five days during that quarter.

This is a repeat violation.

Summary of Licensee's Response to Violation C.

The Licensee denies the violation and states that although the referenced individual was provided with personnel monitoring devices and trained in accordance with the Licensee's requirements for certification as a radiographer's assistant, he was actually a "helper," and was improperly listed on Licensee documents as a radiographer's assistant. The Licensee states that the individual's duties as a "helper" included: (1) Helping with driving, (2) developing film, (3) carrying and moving equipment, and (4) providing surveillance and making surveys under the direction of the radiographer.

The Licensee claims that when the Licensee's field inspection was conducted on the radiographer, the "helper" was not available for interview and the radiographer provided assurance that the "helper" did not perform the functions of a radiographer or a radiographer's assistant.

NRC's Evaluation of Licensee's Response to Violation C.

10 CFR part 34.2 defines a radiographer's assistant as any individual who, under the personal supervision of a radiographer, uses, among other things, radiation survey instruments in radiography. The Licensee's response (item C.2D, letter dated December 21, 1990), indicates that one of the functions of the individual, whom the Licensee referred to as a "helper", is to make a radiation survey if directed to do so by a radiographer. Accordingly, the individual referred to by the Licensee as a "helper" meets the definition of a "radiographer's assistant" in 10 CFR part 34.2. Furthermore, during the NRC inspection, the Licensee's President and Radiation Safety Officer (RSO) confirmed that this individual performed radiography under the supervision of a radiographer on five occasions during the second quarter of 1990. The Licensee's President and RSO also confirmed that the required quarterly audit of this individual was not performed for the second quarter of 1990 because he was not at work while the auditor was on site. These confirmations were made in response to direct questions asked by the inspectors on August 8, 1990. Additional confirmation of the latter is also documented in the Licensee's December 21, 1990 response.

Based on the information collected by the inspectors during the inspection and the Licensee's December 21, 1990 response, it appears that: (1) The individual noted in Violation C. does

meet the definition of a "radiographer's assistant" in 10 CFR part 34.2, (2) this individual did not perform radiographic work on at least five occasions during the second quarter of 1990, and (3) this individual was not audited by the Licensee's RSO during the second quarter of 1990. Therefore, the NRC concludes that the Licensee's argument that the individual did not perform as a radiographer's assistant and, therefore, was not required to be audited by the Licensee, is without merit and does not provide a basis for withdrawing the violation.

II. Restatement of Violation E

10 CFR part 34.24 requires, in part, that each survey instrument used to conduct physical radiation surveys be calibrated at intervals not to exceed three months and after each instrument servicing.

Contrary to the above, on nine occasions from April 9 through April 20, 1990, physical radiation surveys were conducted with a survey instrument which was last calibrated on November 30, 1989.

Summary of Licensee's Response to Violation E

The Licensee denies the violation and states that the information documented in the licensee's records, which indicates the use of a particular survey meter (Serial No. 0099) that had not been calibrated in accordance with 10 CFR part 34.24, is in error. The Licensee further submitted a signed, sworn statement from the employee involved in the error, stating that he did not use an uncalibrated survey instrument and that the information in the log documenting his use of the Serial No. 0099 survey meter was, in fact, a memory recording error.

NRC's Evaluation of Licensee's Response to Violation E

Based on the additional information provided by the Licensee, including the sworn statements of its employee, NRC is withdrawing the violation.

III. Restatement of Violation F

10 CFR part 34.33(c) requires, in part, that pocket dosimeters be checked, at periods not to exceed one year, for correct response to radiation.

Contrary to the above, a pocket dosimeter Serial No. 9062095 was not checked for proper radiation response from January 25, 1988 to January 17, 1990, and it was used on September 29, 1989. Similarly, pocket dosimeter Serial No. 7080642 was not checked for proper response to radiation from August 1988 to August 8, 1990 and this dosimeter was used on December 18, 1989.

This is a repeat violation.

Summary of Licensee's Response to Violation F

The Licensee denies the example given in this violation concerning dosimeter Serial No. 7080642. The Licensee indicates that this pocket dosimeter was checked for proper radiation response but the information was not transferred to the dosimeter record book. To support its claim, the Licensee submitted the results of the dosimeter response check, which apparently was conducted on November 7, 1989. The Licensee provided no information to refute the other example given in this violation concerning pocket dosimeter Serial No. 9062095.

NRC's Evaluation of Licensee's Response to Violation F

Based on the additional information and the record submitted by the Licensee, NRC is withdrawing the example given in Violation F, concerning dosimeter Serial No. 7080642. Violation F remains a violation. However, since the Licensee provided no information to refute the example in Violation F, concerning dosimeter Serial No. 9062095.

IV. Summary of Licensee's Request for Remission of Civil Penalty

The Licensee has protested the \$10,000 civil penalty in whole and requested remission of the civil penalty. While the Licensee did not state its specific basis for requesting that remission, the Licensee denies Violations C and E, and one example of Violation F. In addition, the Licensee notes that Violation G occurred because an employee directly disregarded the instructions of a supervisor and that the radiation overexposure in Violation A may be a falsification. (Here, the Licensee apparently is expressing a theory that the involved employee may have deliberately exposed his personnel monitoring device, possibly in order to receive time off from work.)

NRC Evaluation of Licensee's Request for Remission

NRC's evaluation concerning the Licensee's denial of Violations C and E, and one example of Violation F, is given above. While NRC is withdrawing Violation E, and one example of Violation F, the remaining violations continue to be indicative of a programmatic lack of control of licensed activities. Further, in responding to NRC's concern regarding the need for improved attention to detail and management oversight of licensed activities, the Licensee admits to a lack of management attention and involvement as the root cause of the violations.

The Licensee provided no evidence in support of its speculation that the radiation overexposure in Violation A may have been a falsification.

Concerning the Licensee's explanation that Violation G occurred because a Licensee employee directly disregarded the instructions of a supervisor, NRC holds every licensee fully accountable for the acts of the licensee's employees and expects that licensees will provide sufficient management oversight of its employees to ensure that licensed activities are performed in accordance with regulatory requirements.

NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC staff concludes that six of the seven violations did occur, that one violation should be withdrawn, and that one example of one violation should be withdrawn. Reducing the amount of the proposed \$10,000 civil penalty by 1/7 due to the withdrawal of one violation results in an adjusted civil penalty of \$8571.43. The Licensee has provided no basis for any further remission. Accordingly, NRC concludes that a civil monetary penalty of \$8571.43 should be imposed by order.

[FR Doc. 91-11692 Filed 5-16-91; 8:45 am]

SELLING CODE 7990-01-6

[Docket No. 030-05985, License No. 37-00276-25; EA 90-112]

Professional Service Industries, Inc.,
Pittsburgh Testing Laboratories;
Lombard, Illinois; Order imposing a
Civil Monetary Penalty

I

Professional Service Industries, Inc., (the "Licensee") is the holder of License No. 37-00276-25 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC"). The license authorizes the Licensee to possess and use byproduct material for the conduct of industrial radiography and related activities.

II

An NRC safety inspection of the Licensee's activities under the license was conducted at the Licensee's facility in Sharon Hill, Pennsylvania and at a temporary jobsite in Phoenixville, Pennsylvania on October 4, 1988. Subsequently, the NRC Office of Investigations performed an investigation of licensed activities. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full