



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

AUG 23 1990

DC 91-1
PDR

EECS/LOU

St. Louis Testing Laboratories, Inc.
ATTN: Frederick W. Wiese, President
2810 Clark Avenue
St. Louis, Missouri 63103-2574

Dear Mr. Wiese:

I am responding to your letter of July 16, 1990. The first point in your letter concerns the clarity of the language in 10 CFR 20.403 that requires licensees to report any event that "may have caused or threatens to cause" exposure to the whole body to specific levels of radiation. While we believe that the requirement is clear, we are considering additional notice to our licensees in the form of an NRC Information Notice. Additionally, on May 14, 1990, NRC published for public comment a proposed rule that would clarify the reporting requirements of 10 CFR 20.403 (55 FR 19890, enclosed). While the proposed rule, as published, does not specifically address your concern, I have forwarded your comment for consideration in that rulemaking proceeding. All public comments will be considered in the formulation of the final rule.

A second point in your letter concerns whether or not enforcement action against a specific individual is warranted. As stated in Section V.E of the NRC Enforcement Policy (10 CFR Part 2, Appendix C, enclosed), most transgressions of individuals at the level of Severity Level III, IV, or V violations will be handled by citing only the facility licensee. This follows from NRC's licensing scheme, which generally places the responsibility for compliance with NRC requirements on licensee management. More serious violations, including those involving the integrity of the individual as it concerns NRC (e.g., lying or falsification concerning information required by NRC or provided to NRC) are also considered for enforcement action against the individual. In some cases of this nature, a decision may be made to separate that individual from NRC-licensed activities. Currently, such actions are taken by issuing an Order to the licensee that employs the individual; however, NRC has published for public comment a proposed rule that would allow NRC to issue Orders directly to unlicensed individuals (55 FR 12370, enclosed). In any event, the licensee remains responsible for the acts of its employees and agents.

We understand that this individual has been granted a license to perform industrial radiography by the State of Illinois. Pursuant to Section 274 of the Atomic Energy Act, that State has entered into an Agreement with NRC whereby it assumed regulatory authority over certain activities within the State that involve radioactive materials, including industrial radiography. You raised a number of concerns about this individual with NRC's Region III Office. Region III is forwarding those concerns to the State of Illinois.

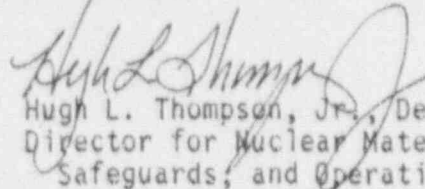
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St. Louis Testing Laboratories

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Thank you for your interest in these matters and for your continued cooperation with the U.S. Nuclear Regulatory Commission.

Sincerely,



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

Enclosures:

1. 55 FR 19890
2. 55 FR 12370
2. 10 CFR Part 2, Appendix C

St. Louis Testing Laboratories, Inc.

Distribution w/incoming ltr, w/o FR Notices

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A. B. Davis, RIII

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R. Bernero, NMSS

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HThompson

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St. Louis Testing Laboratories, Inc.



2810 CLARK AVENUE
ST. LOUIS, MO 63103-2574
314-531-8080
FAX 314-531-8085

*Chemical, Metallurgical, Physical, Non-Destructive,
Spectrographic, Environmental Testing & Analyses
Investigation, Inspections, Field Services*



July 16, 1990

Docket Number 030-05604
License Number 24-00188-02
EA90-009

United States Nuclear Regulatory Commission
Attn: Mr. Hugh L. Thompson, Jr.
Deputy Executive Director for Nuclear Materials Safety,
Safeguards and Operations Support
Washington, DC 20555

SUBJECT: Order Imposing Civil Monetary Penalty - \$5000.00

Dear Mr. Thompson:

I have responded to your letter dated June 20, 1990, which has the same subject. I have paid the penalty by sending a check to the address in your order. I have enclosed a copy of the letter and check. I also sent a copy of them, and this letter to Region III Headquarters in Glen Ellyn, Illinois.

Although I do not agree with the findings of your investigation, I also do not believe that further discussion of the issues will have any effect on the outcome. I choose instead to pay the penalty.

There are two of your findings, however, on which I would like to comment. First, in the NRC evaluation of our response to "violation I.D.", you state that "... the licensee could not conclusively rule out the possibility that an exposure to the whole body of 5 rems or more had occurred...". Additionally, in the "NRC Evaluation of Licensee's Request for Remission" you further state, "If the event does not clearly meet those criteria, and if it is not possible to conclusively rule out such an overexposure within the first 24 hours, then a conservative approach must be taken by the licensee by reporting the event."

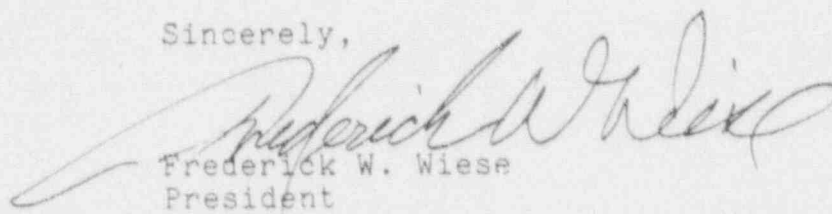
It is my recommendation that the above quotations, or words to that effect, be inserted into 10CFR20, Paragraph 403, "Notifi-

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cations of incidents". In our response to the Notice of Violations dated April 4, 1990, I pointed to what I considered to be the most important issue in this incident, that being our miscalculation of whether or not the incident was reportable. We used our best judgement under the guidance provided by the regulation. The expansion of this guidance provided in the NRC reply and quoted in the above paragraph is helpful, but comes too late for us. Because the NRC doesn't find the guidance in the regulation to be unclear doesn't mean it's not unclear. If the NRC finds our misinterpretation of the guidance serious enough to fine us \$5000.00, then I believe the regulation is seriously flawed enough to need the addition of the guidance mentioned above.

Second, in our response, I also mentioned my disappointment with a system that ignores the obvious involvement of an employee who creates violations that can be reported to the NRC in the event he is dismissed from employment. The NRC response was that the Enforcement Policy provides for enforcement action against individuals in some circumstances. The NRC found the employer's involvement in this incident to be worthy of a \$5000.00 fine and an announcement to the community, yet to my knowledge, no attempt has ever been made to hold this person accountable. I am very concerned upon discovering that this individual has been issued his own radioactive materials license.

Sincerely,



Frederick W. Wiese
President

cc: U.S. Nuclear Regulatory Commission
Region III
799 Roosevelt Road
Glen Ellyn, Illinois 60137

FWW/krh