

NUREG-0940
Vol. 14, No. 2, Part 3
Material Licensees

Enforcement Actions: Significant Actions Resolved Material Licensees

Quarterly Progress Report
April - June 1995

U.S. Nuclear Regulatory Commission

Office of Enforcement



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Quarterly Progress Report
April - June 1995

Manuscript Completed: August 1995
Date Published: August 1995

Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001



ABSTRACT

This compilation summarizes significant enforcement actions that have been resolved during one quarterly period (April - June 1995) and includes copies of letters, Notices, and Orders sent by the Nuclear Regulatory Commission to material licensees with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC, so that actions can be taken to improve safety by avoiding future violations similar to those described in this publication.

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ENFORCEMENT ACTIONS: SIGNIFICANT ACTIONS RESOLVED
MATERIAL LICENSEES

April - June 1995

INTRODUCTION

This issue and Part of NUREG-0940 is being published to inform Nuclear Regulatory Commission (NRC) material licensees about significant enforcement actions and their resolution for the second quarter of 1995. These enforcement actions are issued in accordance with the NRC's Enforcement Policy, "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C. Enforcement actions are issued by the Deputy Executive Director for Nuclear Material Safety, Safeguards, and Operations (DEDS), and the Regional Administrators. The Director, Office of Enforcement, may act for the DEDS in the absence of the DEDS or as directed. The NRC defines significant enforcement actions or escalated enforcement actions as civil penalties, orders, and Notices of Violation for violations categorized at Severity Level I, II, and III (where violations are categorized on a scale of I to IV, with I being the most significant).

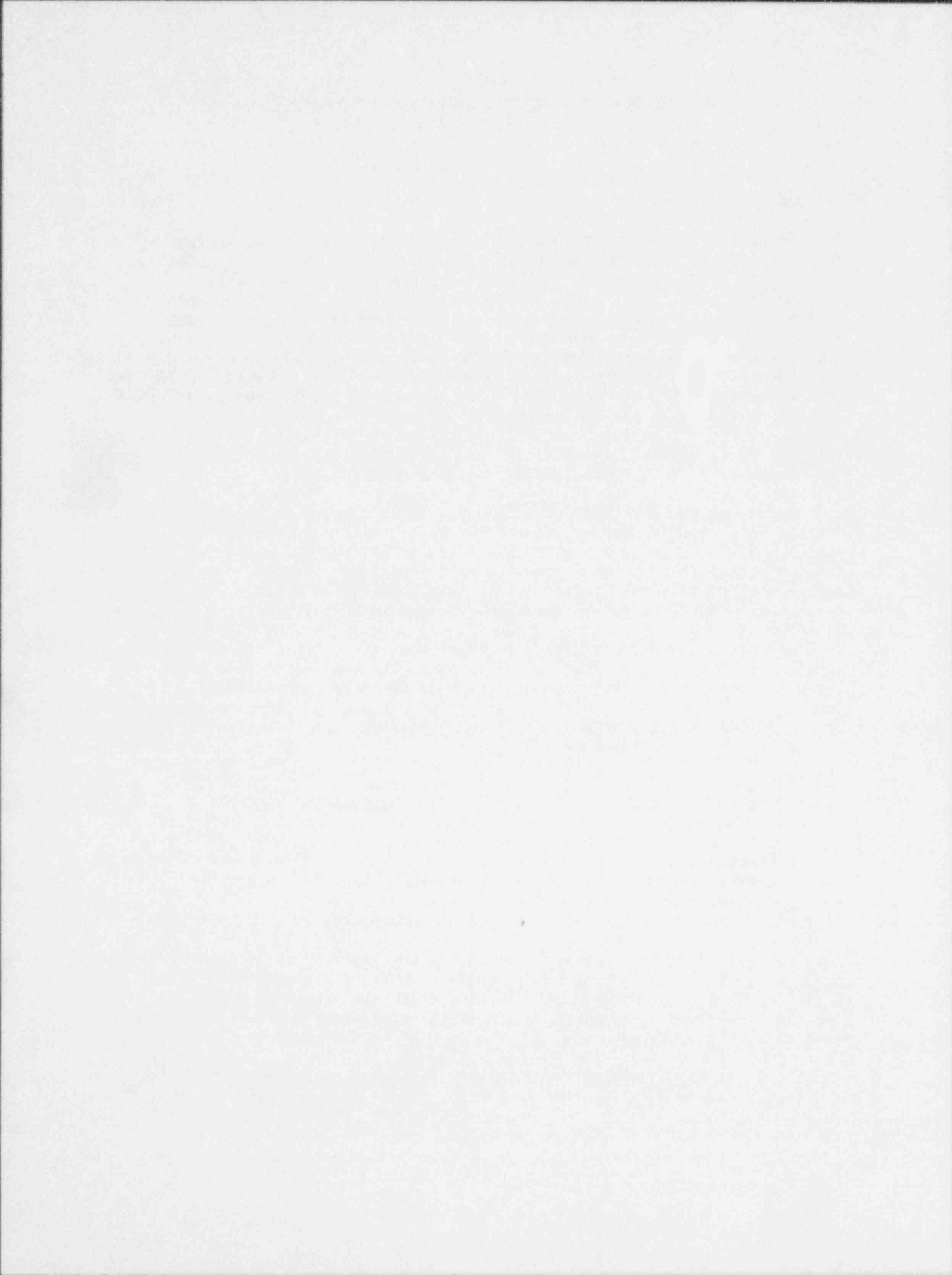
The purpose of the NRC Enforcement Program is to support the agency's safety mission in protecting the public and the environment. Consistent with that purpose, the NRC makes this NUREG available to all reactor licensees in the interest of avoiding similar significant noncompliance issues. Therefore, it is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by NRC.

A brief summary of each significant enforcement action that has been resolved in the second quarter of 1995 can be found in the section of this report entitled "Summaries." Each summary provides the enforcement action (EA) number to identify the case for reference purposes. The supplement number refers to the activity area in which the violations are classified in accordance with the Enforcement Policy.

| | |
|-----------------|---------------------------------------|
| Supplement I | - Reactor Operations |
| Supplement II | - Facility Construction |
| Supplement III | - Safeguards |
| Supplement IV | - Health Physics |
| Supplement V | - Transportation |
| Supplement VI | - Fuel Cycle and Materials Operations |
| Supplement VII | - Miscellaneous Matters |
| Supplement VIII | - Emergency Preparedness |

Section A of this report consists of copies of completed civil penalty or Order actions involving material licensees, arranged alphabetically. Section B includes copies of Notices of Violation that were issued to material licensees for a Severity Level I, II, or III violation, but for which no civil penalties were assessed.

The NRC publishes significant enforcement actions taken against individuals and involving reactor licensees as Parts I and II of NUREG-0940, respectively.



SUMMARIES

CIVIL PENALTIES AND ORDERS

Elias Charles Dow, M.D., Boston Massachusetts
Supplement IV, EA 95-038

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$750.00 was issued April 20, 1995, to emphasize the significance of a violation involving the failure to maintain appropriate security of licensed radioactive material. The licensee was dispensing diagnostic iodine-131 capsules to patients to be self-administered at a later date. The licensee responded to the Notice of Violation in two letters dated April 28, 1995, requesting that the civil penalty be withdrawn. After consideration of the licensee's response, an Order Imposing Civil Penalty in the amount of \$750 was issued June 16, 1995. The licensee paid the civil penalty on June 21, 1995.

Environmental Testing Laboratories, Inc., Forked River, New Jersey
Supplement VI, EAs 94-179 and 94-226

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued November 10, 1994. Also included were a Notification of Consideration of the Imposition of Daily Civil Penalties and an Order to Cease and Desist Use and Possession of Regulated Byproduct Material. The actions were taken to emphasize the unacceptability of possessing byproduct material with an expired license and the need for compliance with Commission requirements. The actions were based on the company's continued possession of licensed material in the form of nickel-63 foils, even though the license expired in August 1991. On February 15, 1995, an Order Imposing Civil Penalty in the amount of \$3,000 was issued because the licensee did not respond to the Notice of Violation and Proposed Imposition of Civil Penalty issued on November 10, 1994. The licensee did transfer the material to an authorized recipient and, for that reason, the staff did not impose daily civil penalties. On March 23, 1995, the licensee responded to the Order and requested abatement of the civil penalty based on its transfer of the material and its request for a license termination. After considering the licensee's response, an Order Rescinding the Order Imposing Monetary Civil Penalty in the amount of \$3,000 and a Notice of Termination of License were issued April 14, 1995.

High-way Engineering & Survey Co, Bonners Ferry, Idaho
EA 95-024

An Order to Cease and Desist Use and Possession of Regulated Byproduct Material was issued March 24, 1995, based on possession and use of byproduct material in moisture density gauge without an NRC license. The license which expired June 1991, was issued by the State of Idaho and subsequently became an NRC license, when the Commission reasserted its authority over Idaho. The licensee submitted a Form 314, dated May 8, 1995, certifying that the material had been transferred to an authorized recipient. On June 14, 1995, a Notice of Termination of License was issued.

Honeywell Incorporated, Minneapolis, Minnesota
Supplements VI and VII, EA 92-112

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$20,000 was issued April 20, 1995, to emphasize the need for all individuals working under an NRC-licensed program to conduct all facets of licensed activities with integrity and ensure that all NRC requirements are strictly adhered to. The action was based on violations involving transfer of NRC licenses and licensed material to Alliant Techsystems during a corporate divestiture without first receiving NRC authorization. The individuals responsible for notifying NRC and obtaining the authorization admitted during an investigation that they knew the requirement, but claimed a perceived conflict with an "inside trader" prohibition of the Securities and Exchange Commission. The licensee responded and paid the civil penalty on May 9, 1995.

IHS Geotech & CMT, Inc., San Antonio, Texas
Supplement VI, EA 95-007

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$500 was issued February 23, 1995, to emphasize the unacceptability of using moisture/density gauges without authorization and the importance of ensuring compliance in the future. The action was based on the failure of the licensee to obtain authorization prior to conducting licensed activities at several military installations in Texas that are areas under exclusive federal jurisdiction. The licensee responded in a letter dated March 21, 1995. After consideration of the licensee's response an Order Imposing the Civil Monetary Penalty in the amount of \$500 was issued May 4, 1995. The licensee paid the civil on May 15, 1995.

Jones Inspection Services, Alderson, Oklahoma
EA 94-241

An Order Suspending Authority Under General License (Effective Immediately) was issued April 11, 1995. The action was based on the licensee's failure to request reciprocity under 10 CFR 150.20 before working in Oklahoma, a non-Agreement State under NRC jurisdiction. The action suspends the licensee's and any successor entity's authority to conduct activities in non-Agreement States under the general license granted by 10 CFR 150.20.

Mattingly Testing Services, Inc., Great Falls, Montana
Supplements IV and VI, EAs 95-035 and 95-063

A Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$15,500 and an Order Modifying License was issued May 5, 1995, to emphasize the unacceptability of the deliberate violations that have occurred and the necessity of management oversight to ensure compliance with all NRC requirements associated with radiography operations. The actions were based on two deliberate violations involving the failure to ensure that an assistant radiographer was trained and supervised while conducting radiographic operations, and other violations (some of which were deliberate) which indicated a programmatic breakdown. The Order

Modifying License required the licensee to obtain the services of an independent auditor to conduct an initial and several periodic audits of the licensee's radiation safety program. The licensee responded and paid the civil penalties on June 1, 1995.

McCormick, Taylor and Associates, Inc., Philadelphia, Pennsylvania
Supplement IV, EA 94-253

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued February 13, 1995, to emphasize the importance of proper security of radioactive material at all times and to ensure that the material is not lost or stolen. The action was based on the company's failure to maintain proper security of a moisture density gauge, resulting in the gauge being lost. The license had been revoked in 1992, for failure to pay fees, the licensee had failed to transfer the gauge as ordered, and an NOV was issued in September 1994 for unauthorized possession of material. The licensee responded to the 1995 Notice in two letters dated March 10, 1995. After consideration of the responses, the staff adjusted the amount of the proposed civil penalty that had been escalated to emphasize the importance of maintaining a valid license based on the licensee's assertion that it did not intend to possess NRC-licensed material in the future. An Order Imposing Civil Monetary Penalty in the amount of \$2,000 was issued April 26, 1995. The licensee paid the civil penalty on May 1, 1995.

Memorial Hospital, South Bend, Indiana
Supplement VI, EA 94-217

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,500 was issued November 18, 1994, to emphasize the need for strict adherence to, and strong management oversight of, the quality management program required by 10 CFR 35.32. The action was based on the licensee's failure to meet the objective that final plans of treatment and related calculations for brachytherapy were in accordance with a written directive. This failure led to a brachytherapy misadministration in September 1994 in which a patient received a 36 percent underdose. The licensee responded in letters dated December 15, 1994 and February 17, 1995, requesting withdrawal of the violation and the civil penalty. Based on new information provided by the licensee, the violation was categorized at Severity Level IV and the civil penalty was withdrawn on April 3, 1995.

Old Forge Testing Company, Old Forge, Pennsylvania
Supplement VI, EAs 94-180 and 94-223

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$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 was issued November 1, 1994, to emphasize the unacceptability of possessing byproduct material with an expired license and the need for compliance with Commission requirements. The actions were based on the company's continued possession of byproduct material in the form of a measuring gauge even though the NRC license had expired. The licensee divested itself of the

licensed material and requested mitigation of the civil penalty based on financial hardship. After consideration of the licensee's response, the civil penalty was withdrawn on June 30, 1995.

Joseph Paolino and Sons, Inc., Mt. Laurel, New Jersey
Supplement VI, EA 94-248

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued December 14, 1994, to emphasize the unacceptability of possessing byproduct material without a license, the licensee's noncompliance with a July 30, 1993 Order, and the need for compliance with Commission requirements. The action was based on the licensee's continued possession of byproduct material even though an Order Revoking License was issued for nonpayment of fees. The licensee did not respond and a Notice of Violation and Proposed Imposition of Daily Civil Penalties in the amount of \$15,000 was issued March 8, 1995. The licensee transferred the material to an authorized recipient on March 24, 1995, and a settlement agreement was signed on April 13, 1995, and a Confirmatory Order was issued May 9, 1995 agreeing to the terms. The NRC agreed to withdraw the proposed civil penalties and the licensee agreed that for a period of five years (1) neither the licensee, nor any successor entity, will apply to the NRC for a license, and (2) neither Joseph Paolino and Sons, Inc., nor a successor entity, will engage in NRC-licensed activities within the NRC jurisdiction for the same period of time.

NOTICE OF VIOLATIONS, NO CIVIL PENALTY

Braun Intertec Corporation, Minneapolis, Minnesota
Supplement IV, EA 95-104

A Notice of Violation was issued June 23, 1995 based on a violation in which a moisture density gauge was damaged. A civil penalty was not proposed because the licensee identified the violation, took good corrective actions and has a good past performance history.

Geo-Test, Ltd., Saginaw, Michigan
Supplement IV, EA 95-112

A Notice of Violation was issued June 27, 1995 based on a missing soil moisture/density gauge. The violation involved the failure to secure a gauge in the open bed of a pick-up truck. A licensee inspector unlocked the restraining chain in an unrestricted area, then entered the licensee's office. He returned about 15 minutes later and the gauge was missing. A civil penalty was not proposed because the licensee identified the violation, took good corrective actions to identify the root cause of the violation, and the licensee had a good past performance history.

Robert F. Hall
IA 95-018

A Notice of Violation was issued June 6, 1995 based on the results of an inspection and investigation which concluded that the individual, acting

in the capacity of Chairman of the Radioisotope Committee deliberately allowed physicians who were not named on the NRC license to perform teletherapy treatments between December 1992 and April 1993 without supervision of an authorized user. An Order Prohibiting Involvement was not issued because, among other things, the individual acknowledged that he had erred and had exercised poor judgment in the matter.

Darin R. Hanson
IA 95-014

A Notice of Violation was issued May 5, 1995 based on the results of an inspection and investigation which concluded that the individual deliberately caused violations of NRC requirements by (1) allowing a radiographer's assistant who was not under the radiographer's personal supervision to use a radiographic exposure device, (2) allowing a radiographer's assistant to not secure by locking the sealed source assembly after returning the source to the shielded position at the termination of a radiographic exposure, and (3) not ensuring that radiation areas and high radiation areas, in which the licensee was conducting industrial radiography, were posted. The issuance of an order to the individual was considered, but NRC decided instead to issue an order requiring the licensee to obtain the services of a consultant to audit the licensee's radiation safety program.

Bart A. Kutt
IA 95-013

A Notice of Violation was issued May 5, 1995 based on the results of an inspection and investigation which concluded that the individual deliberately caused violations of NRC requirements by (1) permitting an employee to act as radiographer's assistant without being fully trained, (2) not observing the performance of several radiographers involved in radiographic operations during intervals exceeding three months. The issuance of an order to the individual was considered, but NRC decided instead to issue an order requiring the licensee to obtain the services of a consultant to audit the licensee's radiation safety program.

Charles K. Loh
IA 95-017

A Notice of Violation was issued June 6, 1995 based on the results of an inspection and investigation which concluded that the individual, who was then Radiation Safety Officer, deliberately allowed physicians who were not named on the license to perform teletherapy treatments between December 1992 and April 1993 without supervision by an authorized user. An Order Prohibiting Involvement was not issued because, among other things, the individual acknowledged that he had erred and had exercised poor judgment in the matter.

Mark M. Mattingly
IA 95-012

A Notice of Violation was issued May 5, 1995 based on the results of an inspection and investigation which concluded that the individual, who is

the president and radiation safety officer, deliberately caused violations of NRC requirements by (1) allowing the licensee to store and use licensed material at a location not authorized by the license, and (2) not observing the performance of several radiographers involved in radiographic operations during intervals exceeding three months. The issuance of an order to the individual was considered, but the NRC decided instead to issue an order requiring the licensee to obtain the services of a consultant to audit the licensee's radiation safety program.

Frank Papalia
IA 95-020

A Notice of Violation was issued June 28, 1995 based on an inspection and investigation which concluded that the individual deliberately provided to the NRC inspector information that the individual knew to be inaccurate. The individual who was questioned on whether he had used an iridium-92 source in Pennsylvania, a non-Agreement State, deliberately provided inaccurate information to the Commission in that he stated he had not used such source in Pennsylvania. The individual's statement was inaccurate because the company's records indicated that he had. The staff considered issuing an order prohibiting any further involvement in nuclear activities for a certain period, but decided against such an order since the individual was candid and contrite during the enforcement conference, and since he has acknowledged that he lied to the NRC and was remorseful.

Soil and Materials Engineers, Inc., Plymouth, Michigan
Supplement IV, EA 95-055

A Notice of Violation was issued April 18, 1995 based on a violation involving the unauthorized removal of a soil moisture density gauge containing NRC-licensed materials. On April 11, 1994 the gauge was found by a scrap metal dealer in Wisconsin, in a shipment from a Detroit, Michigan scrap dealer. A civil penalty was not proposed because the licensee identified the violation, took good corrective actions, and because the licensee exhibited good past performance.

A. CIVIL PENALTIES AND ORDERS



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

April 20, 1995

EA No. 95-038

Elias Charles Dow, M.D.
1101 Beacon Street
Boston, Massachusetts 02146

Subject: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$750
(NRC Inspection No. 030-01888/95-001)

Dear Dr. Dow:

This letter refers to the NRC inspection conducted on February 8, and March 1, 1995, at your office located in Brookline, Massachusetts, of activities authorized by NRC License No. 20-06900-01. The inspection report was sent to you on March 17, 1995. Based on the inspection, fourteen violations of NRC requirements were identified, one of which was similar to a violation identified during a previous NRC inspection at your facility in 1987. On March 28, 1995, an enforcement conference was conducted by telephone with you and your consultant, Victor Evdokimoff, to discuss the violations, their causes and your corrective actions. A copy of the enforcement conference report was sent to you on April 6, 1995.

The violations are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). The most significant violation involved your failure to control licensed radioactive material in that diagnostic quantities of iodine-131 in capsules were sent home with patients (in unmarked and unlabeled containers) for later self-administration. This violation is of particular concern to the NRC because it could have resulted in unnecessary exposure to members of the public. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, the violation is classified at Severity Level III and is described in Section I of the enclosed Notice.

Thirteen other violations, including the failure to assay diagnostic dosages of iodine-131 prior to administration, violations regarding the dose calibrator, and violations of the Quality Management Program (QMP), are described in Section II of the enclosed Notice. Although these violations are classified at either Severity Level IV or V, the failure to adhere to these regulatory requirements, including implementation of a QMP for the administration of iodine-131 sodium iodide dosages greater than 30 microcuries, represents a significant regulatory concern. The number and nature of the violations, as well as the fact that several involved multiple examples that occurred over an extended duration, indicate that there has been a lack of attention toward licensed responsibilities. The NRC is particularly concerned that you, as the Radiation Safety Officer, did not clearly understand nor implement your responsibilities under the terms of your license. These violations demonstrate the importance of your increased attention to the radiation safety program to ensure that regulatory requirements are understood, and your activities are conducted safely and in accordance with those requirements.

The NRC license issued to you entrusts you with the responsibility for overseeing and assuring radiation safety is maintained in accordance with the regulations and your license. Therefore, the NRC expects effective oversight and implementation of your licensed program. Incumbent upon each NRC licensee is the responsibility to protect the public health and safety by ensuring that all requirements of the NRC license are met and any potential violations of NRC requirements are identified and corrected expeditiously. In this case, adequate attention was not provided to your program.

The NRC recognizes that after the violations were identified by the NRC, actions were taken or planned to correct the violations and effect improvements in the control and implementation of the radiation safety program. These actions [which were described at the enforcement conference, as well as in a Confirmatory Action Letter (CAL) (1-95-001) issued on February 6, 1995; its supplement, issued on March 3, 1995; and a revision to the supplement on April 6, 1995] included: (1) appointment of a consultant to perform a comprehensive independent audit of your licensed program; (2) immediately stopping the practice of sending diagnostic iodine-131 dosages home with patients, and contacting patients who possessed radioactive material and requiring them to return the unused dosages to you immediately; (3) suspension of all therapeutic treatments until a number of actions set forth in the CAL supplement were implemented; (4) development of procedures to verify compliance with all aspects of your QMP; and (5) providing training on procedures to staff.

Notwithstanding those actions, to emphasize the significance of the violation involving the failure to maintain appropriate security of the iodine-131 capsules, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$750 for the Severity Level III violation set forth in Section I of the enclosed Notice.

The base civil penalty amount for a Severity Level III violation is \$500. The civil penalty adjustment factors in Section VII.B.2 of the enforcement policy were considered as follows: the base civil penalty amount for the violation in Section I of the Notice has been (1) increased by 50% because the violation was identified by the NRC; (2) not adjusted based on your corrective actions for this violation because some patients to whom capsules had been provided were not promptly contacted regarding the return of the capsules; (3) increased by 100% because there were multiple examples of this particular violation identified during the inspection period (on February 6, 1995, you informed the NRC during a telephone conversation that you routinely provided diagnostic quantities of iodine-131 in capsules to patients and instructed the patients to take the capsules home for self-administration); and (4) decreased by 100% on your past enforcement history which involved only one violation being identified during the last two NRC inspections in 1992 and 1987. The other escalation/mitigation factors were considered and no further adjustment is warranted. Therefore, on balance, 50% escalation of the base penalty is warranted.

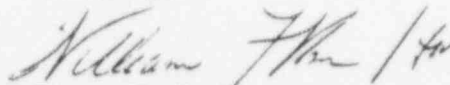
With respect to the violations in Section II of the Notice, although they have been classified at either Severity Level IV or V, and have not been assessed a civil penalty, the NRC emphasizes that any similar violations in the future could result in escalated enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In this regard, please address how you plan to maintain enhanced oversight to ensure compliance with the requirements. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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 Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards 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.

The responses directed by this letter and the enclosed Notice 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,



Thomas T. Martin
Regional Administrator

Docket No. 030-01888
License No. 20-06900-01

Enclosure: Notice of Violation and Proposed Imposition
of Civil Penalty

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Elias Charles Dow, M.D.
Boston, Massachusetts

Docket No. 030-01888
License No. 20-06900-01
EA 95-038

During an NRC inspection conducted on February 8 and March 1, 1995, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

I. Violation Assessed a Civil Penalty

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, as of February 8, 1995, the licensee did not secure from unauthorized removal or limit access to licensed materials stored in an unrestricted area. Specifically, the licensee on numerous occasions did not secure diagnostic capsules (each containing between 14 and 129 microcuries of iodine-131) located in patients' homes, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. (IFS Code 01013)

This is a Severity Level III violation (Supplement IV).
Civil Penalty - \$750.

II. Violations Not Assessed a Civil Penalty

A. 10 CFR 35.53(a) requires that a licensee measure the activity of each radiopharmaceutical dosage that contains more than 10 microcuries of a photon-emitting radionuclide before medical use. 10 CFR 35.53(b) requires that a licensee measure the activity of each radiopharmaceutical dosage with a desired activity of 10 microcuries or less of a photon-emitting radionuclide before medical use to verify that the dosage does not exceed 10 microcuries.

Contrary to the above, as of February 8, 1995, the licensee did not measure radiopharmaceutical dosages containing up to 129 microcuries of iodine-131, a photon-emitting radionuclide, before it was administered to a patient for medical use, nor did the Licensee measure these radiopharmaceutical dosages before being administered to a patient to verify that a dosage did not exceed 10 microcuries.

This is a Severity Level IV violation (Supplement VI).

- B. 10 CFR 35.32(a)(1) requires, in part, that the licensee establish and maintain a written quality management program which must include written policies and procedures to meet the objective that, prior to administration, a written directive is prepared for any administration of quantities greater than 30 microcuries of either sodium iodide iodine-125 or iodine-131.

10 CFR 35.2 defines a written directive as an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation and containing certain information including, for any administration of quantities greater than 30 microcuries of either sodium iodide iodine-125 or iodine-131, the dosage.

Contrary to the above, as of March 1, 1995, the licensee's quality management program did not include a written procedure to meet the objectives that a written directive be prepared prior to administering quantities greater than 30 microcuries of either sodium iodide iodine-125 or iodine-131.

This is a Severity Level IV violation (Supplement VI).

- C. 10 CFR 35.25(a)(2) requires, in part, that a licensee that permits the use of byproduct material by an individual under the supervision of an authorized user shall require the supervised individual to follow the written quality management procedures established by the licensee.

The licensee's quality management procedure, dated June 18, 1993, states that, "Every patient tested or treated is well known to us" and requires that every patient be "further identified by both social security number, date of birth, and driver's license".

Contrary to the above, as of March 1, 1995, the licensee's technologist, an individual under the supervision of the licensee's authorized user, did not follow the written quality management procedures established by the licensee in that dosages were administered without requiring further identification of the patient.

This is a Severity Level IV violation (Supplement VI).

- D. 10 CFR 35.32(b) requires, in part, that the licensee develop procedures for, and conduct a review to verify compliance with, all aspects of the quality management program at intervals no greater than 12 months.

Contrary to the above, the licensee did not conduct a review to verify compliance with the licensee quality management program between June 18, 1993, when the program was developed, and March 1, 1995, an interval greater than 12 months.

This is a Severity Level IV violation (Supplement VI).

- E. 10 CFR 35.120 requires that a licensee authorized to use byproduct material for uptake, dilution, and excretion studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour. 10 CFR 35.320 requires that a licensee authorized to use byproduct material for radiopharmaceutical therapy possess a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Contrary to the above, as of March 1, 1995, the licensee did not possess a portable radiation detection or a radiation measurement survey instrument capable of detecting or measuring the above listed dose rates. Specifically, the licensee's Health Physics Instruments, Inc., Model 4020 survey instrument only was capable of detecting and measuring dose rates between 0.1 millirem per hour and 20 millirem per hour.

This is a Severity Level IV violation (Supplement VI).

- F. 10 CFR 35.70(a) requires that a licensee survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

Contrary to the above, from January 1995 until February 1995, the licensee did not survey with a radiation detection instrument at the end of the day areas where radiopharmaceuticals were routinely administered. Specifically, the licensee's technologist stated that surveys were only performed once per week and not necessarily on the day doses were administered.

This is a Severity Level IV violation (Supplement VI).

- G. 10 CFR 35.51(a)(3) requires that a licensee conspicuously note the apparent exposure rate from a dedicated check source, as determined at the time of calibration, and the date of calibration on any survey instrument used to show compliance with 10 CFR Part 35.

Contrary to the above, as of February 8, 1995, the licensee did not have the apparent exposure rate from a dedicated check source, as determined at the time of calibration, or the date of calibration noted on its Health Physics Instruments, Inc., Model 4020 survey instrument, and the licensee was using this survey instrument to show compliance with 10 CFR Part 35.

This is a Severity Level IV violation (Supplement VI).

- H. 10 CFR 35.51(d) requires, in part, that a licensee retain a record of each survey instrument calibration for three years.

Contrary to the above, as of February 8, 1995, the licensee had never retained a record of the annual survey instrument calibrations performed on its Health Physics Instruments, Inc., Model 4020 survey instrument.

This is a Severity Level V violation (Supplement VI).

- I. 10 CFR 35.53(c) requires that a licensee retain records of the measurement of radiopharmaceutical dosages for three years, and that the record contain the:

- (1) Generic name, trade name, or abbreviation of the radiopharmaceutical, its lot number, and expiration dates and the radionuclide;
- (2) Patient's name, and identification number if one has been assigned;
- (3) Prescribed dosage and activity of the dosage at the time of measurement, or a notation that the total activity is less than 10 microcuries;
- (4) Date and time of the measurement; and
- (5) Initials of the individual who made the record.

Contrary to the above, as of February 8, 1995, the licensee's records of the measurement of radiopharmaceutical dosages did not contain the radiopharmaceutical lot number and expiration date, prescribed dosage, time of measurement, and initials of the individual who made the record.

This is a Severity Level V violation (Supplement VI).

- J. 10 CFR 35.50(e) and 35.50(e)(1) require, in part, that a licensee retain records of daily constancy checks of the dose calibrator for three years unless directed otherwise, and that the records include the model and serial number of the dose calibrator, the identity of the radionuclide contained in the check source, the date of the check, the activity measured, and the initials of the individual who performed the check.

Contrary to the above, as of February 8, 1995, the licensee's records of daily constancy checks of its dose calibrator performed between March 11, 1994 and February 6, 1995 did not include the model and serial number of the dose calibrator, the identity of the radionuclide contained in the check source, and the initials of the individual who performed the check.

This is a Severity Level V violation (Supplement VI).

- K. 10 CFR 35.50(d) requires, in part, that a licensee repair or replace the dose calibrator if the accuracy or constancy error exceeds 10 percent.

Contrary to the above, on February 14 and 15, 1995, the licensee did not repair or replace the dose calibrator when the constancy error on those dates exceeded 10 percent. Specifically, on February 14, 1995, the constancy error was 25 percent, and on February 15, 1995, the constancy error was 16 percent.

This is a Severity Level IV violation (Supplement VI).

- L. 10 CFR 35.50(b)(2) requires, in part, that a licensee test the dose calibrator for accuracy by assaying at least two sealed sources containing different radionuclides whose activity the manufacturer has determined within 5 percent of its stated activity, at least one of which has a principal photon energy between 100 keV and 500 keV.

Contrary to the above, as of February 8, 1995, the licensee did not test its dose calibrator for accuracy by assaying at least two sealed sources containing different radionuclides whose activity the manufacturer has determined within 5 percent of its stated activity, at least one of which has a principal photon energy between 100 keV and 500 keV. Specifically, the licensee stated that they performed this test using only a single sealed source of cobalt-60 and the principal photon energies for cobalt-60 are 1173 and 1332 keV.

This is a Severity Level IV violation (Supplement VI).

- M. 10 CFR 35.50(b)(3) requires, in part, that a licensee test each dose calibrator for linearity at least quarterly over the range of its use between the highest dosage that will be administered to a patient and 10 microcuries.

Contrary to the above,

1. the licensee's dose calibrator linearity test performed on August 17, 1994, covered only the range between 50 microcuries and 400 microcuries. Since August 17, 1994, the highest dosage that the licensee administered to a patient was 23.75 millicuries and the lowest dosage that the licensee administered to a patient was 14 microcuries.
2. the licensee did not test its dose calibrator for linearity from August 17, 1994, until February 8, 1995, a period in excess of a calendar quarter.

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Elias Charles Dow, M.D. (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued to show cause why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this

Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

Dated at King of Prussia, Pennsylvania
this 20th day of April 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

June 16, 1995

EA 95-038

Elias Charles Dow, M.D.
1101 Beacon Street
Boston, Massachusetts 02146

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$750

Dear Dr. Dow:

This refers to your two letters, both dated April 28, 1995, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated April 20, 1995. Our letter and Notice described several violations of NRC requirements, including a violation that was classified at Severity Level III and involved the failure to maintain security of licensed radioactive material. A civil penalty in the amount of \$750 was proposed for that violation. The penalty was issued to emphasize the importance of maintaining appropriate security of iodine-131 capsules.

In your responses, you deny the violation assessed a penalty (Violation I) and request that the penalty be withdrawn for the reasons summarized in the enclosed Appendix. In addition, you neither admitted nor denied the remaining violations (Violations II.A - M), but submitted corrective actions for each.

After consideration of your responses, we have concluded for the reasons given in the Appendix attached to the enclosed Order Imposing a Civil Monetary Penalty, that an adequate basis was not provided for withdrawal of Violation I, or for withdrawal of the civil penalty. Accordingly, we hereby serve the enclosed Order on Elias Charles Dow, M.D., imposing a civil monetary penalty in the amount of \$750. As provided in Section IV of the enclosed Order, payment should be made 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 James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

With regard to your response to the violations not assessed a civil penalty, additional information is needed. Specifically, in your response to Violations II.G and II.H, you stated that your survey meter was calibrated by your consultant. It is our understanding that your consultant only tested your survey instrument's response to radiation with a check source. As required by 10 CFR 35.51, the survey meter that you currently possess, as well as the survey meter that you committed to purchase as a corrective action for Violation II.D., must be calibrated with a radiation source on all scales with readings up to 1000 millirem per hour, at two separated readings on each

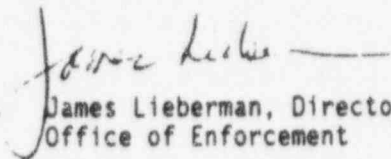
scale. Additionally, your survey meters must be accompanied by a dedicated check source and, at the time of calibration, the apparent exposure rate from the check source must be noted on the survey meter. Please confirm that your survey meters will be calibrated in accordance with the requirements described in 10 CFR 35.51.

Also, in your response to Violation II.I, it appears to us that the information required by 10 CFR 35.53(c) will be documented in two separate records; namely, (1) the radiopharmaceutical, lot number, expiration date, and radionuclide will be documented on shipment invoices; and (2) the patient's name, prescribed dosage, administered dosage, and date of dosage measurement will be documented on the patient's written directive. If your intent is to have two separate records, please describe the method used to cross reference these records such that it would be possible to identify the specific radiopharmaceutical, lot number, expiration date and radionuclide administered to each patient.

This additional information should be provided to the NRC within 30 days of the date of this letter. We will review the effectiveness of your corrective and preventive actions during a future inspection.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosures will be placed in the NRC's Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Docket No. 030-01888
License No. 20-06900-01

Enclosures: As Stated

cc w/encls:
Commonwealth of Massachusetts

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

ELIAS CHARLES DOW, M.D.
Boston, Massachusetts

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Docket No. 030-01888
License No. 20-06900-01
EA 95-038

ORDER IMPOSING A CIVIL MONETARY PENALTY

I

Elias Charles Dow, M.D. (Licensee) is the holder of Byproduct Materials License No. 20-06900-01 (License) issued by the Atomic Energy Commission on November 7, 1960. The License was most recently renewed by the Nuclear Regulatory Commission (NRC or Commission) on April 24, 1990, and is currently under timely renewal. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at the Licensee's facility in Brookline, Massachusetts.

II

An inspection of the Licensee's activities was conducted on February 8, and March 1, 1995, at the Licensee's facility located in Brookline, Massachusetts. 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 April 20, 1995. The Notice states 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 one of the violations.

The Licensee responded to the Notice in two letters, both dated April 28, 1995. In its responses, the Licensee denies the violation assessed a civil penalty (Violation I), and requests that the penalty be withdrawn.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that Violation I occurred as stated in the Notice. The staff also has determined that an adequate basis was not provided for mitigation of the penalty and that a penalty of \$750 should be imposed.

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 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$750 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 James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

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, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 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 I, 475 Allendale Road, King of Prussia, PA 19406.

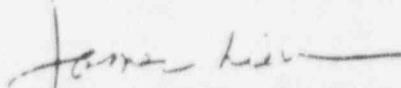
If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by 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 Section I of the Notice referenced in Section II above, and

(b) whether on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 16th day of June 1995

APPENDIX

EVALUATIONS AND CONCLUSION

On April 20, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a NRC inspection conducted at the Licensee's facility located in Brookline, Massachusetts. The penalty was issued for one violation. The Licensee responded to the Notice in two letters, both dated April 28, 1995. In its responses, the Licensee denies the violation assessed a penalty (Violation I), and requests that the civil penalty be withdrawn. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation I

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, as of February 8, 1995, the licensee did not secure from unauthorized removal or limit access to licensed materials stored in an unrestricted area. Specifically, on numerous occasions, the licensee did not secure diagnostic capsules (each containing between 14 and 129 microcuries of iodine-131 (I-131)) located in patients' homes, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material.

Summary of Licensee's Response to Violation I

In its responses, the Licensee denies the violation and requests that the civil penalty be withdrawn.

The Licensee states that the NMSS Licensee Newsletter 95-1 issued in March/April 1995, and the Federal Register dated January 25, 1995, both state that the medical administration of any radiation or radioactive material to any individual, including an individual who is not supposed to receive a medical administration, is regulated by the Commission's provisions governing the medical use of byproduct material (10 CFR Part 35) rather than the dose limits in NRC's regulation concerning standards for protection against radiation (10 CFR Part 20). The Licensee states that Part 35 takes precedence over Part 20 because the Licensee's use of I-131 in this instance is a medical use. The Licensee states that the regulation for unrestricted areas does not apply, and asserts that this is stated in 10 CFR 20.1002. The Licensee states that it appears that there should not have been a citation, since the I-131 was used for medical use.

The Licensee also states that the dispensing of I-131 capsules for diagnostic use has never resulted in any harm, and there is no way that capsules containing between 14 and 129 microcuries could have caused unnecessary exposure to members of the public anymore than if the patient had ingested the same capsule prior to

leaving the premises. The Licensee further states that there have never been any reports in medical literature of instances of I-131 causing any harm to anyone at this dosage. The Licensee states that it is purely speculative and misleading to state that this could cause any unnecessary exposure to members of the public.

The Licensee further states that a patient who ingests 25 millicuries of I-131 for therapeutic purposes is permitted to go home, be with family, and mingle with the public without restriction. In addition, the licensee states that it seems paradoxical and illogical that the possession of a 100 microcurie capsule, either in the patient's possession or ingested internally, would constitute any public health hazard.

NRC Evaluation of Licensee's Response to Violation I

Notwithstanding the Licensee's contention, the NRC maintains that a violation of 10 CFR Part 20 occurred, and that 10 CFR 20.1801 and 20.1802 required that the I-131 be secured or controlled until such time as it was administered to a patient. By giving the I-131 capsules to patients to take to their residence for self administration at a later time, the Licensee failed to secure or control the licensed material as required.

With respect to the Licensee's comment regarding the NMSS Licensee Newsletter 95-1 issued March/April 1995, and the Federal Register notice on January 25, 1995 (60 FR 4872), these documents describe a *proposed* NRC rulemaking concerning errors in administering radiation or radioactive materials for medical purposes. That rulemaking, *if adopted in final form*, would clarify that the dose limits for individual members of the public in 10 CFR 20.1301 do not apply to the exposure that the individual receives from such an error¹. There is nothing in the proposed rulemaking that would exempt the medical use of licensed material from 10 CFR 20.1801 and 20.1802, which are the requirements that are cited in the violation. 10 CFR Part 35 does not take precedence over 10 CFR Part 20. 10 CFR 20.1002, "Scope", specifically states that the regulations in 10 CFR Part 20 apply to persons licensed pursuant to 10 CFR Parts 30 through 36, which includes 10 CFR Part 35, "Medical Use of Byproduct Material." Similarly, 10 CFR 35.1, "Purpose and scope", states that the requirements and provisions of 10 CFR Part 20 apply to licensees subject to 10 CFR Part 35, unless specifically exempted.

Therefore, the NRC maintains that the violation occurred as stated in the Notice.

With respect to the Licensee's statement that dispensing of capsules containing between 14 and 129 microcuries of I-131 could not have caused any unnecessary exposure to members of the public anymore than if the patient had ingested the same capsule prior to leaving the premises, the NRC disagrees. Because of the Licensee's lack of security or control over the capsule (*i.e.*, after the capsule had been given to the patient to take to the patient's home), the capsule could have been ingested inadvertently by someone other than the patient. Such an event

¹Currently, 10 CFR 20.1002 provides that the limits of that Part do not apply to doses due to exposure of patients to radiation for the purpose of medical diagnosis or therapy.

would result in an unnecessary radiation exposure to an unintended person far in excess of the regulatory limits for radiation exposure to members of the public. Therefore, the violation was properly categorized at Severity Level I in accordance with the Enforcement Policy because of the potential safety hazard.

NRC Conclusion

The NRC has concluded that the violation assessed a penalty occurred as stated in the Notice. In addition, the NRC has concluded that the Licensee did not provide an adequate basis for withdrawal of the civil penalty. Accordingly, the proposed civil penalty in the amount of \$750 should be imposed.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545-0001

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 08731

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)

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.

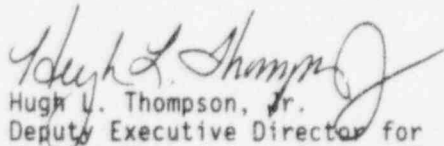
You are required to comply with the applicable provisions of 10 CFR Part 20 until the byproduct material is transferred to an authorized recipient. You must comply with this Order. Your response to this Order will be reviewed to determine whether further enforcement action will be taken against you pursuant 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.

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

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Environmental Testing
Laboratories, Inc. (ETL)
Forked River, New Jersey

Docket No. 030-29343
License No. 29-19310-02 (Expired)
EA 94-226

Based on a review of communications (and associated documents) conducted between the NRC and Environmental Testing Laboratories, Inc. (ETL) between November 1991 and October 26, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 30.3 states, in part, that except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter.

Contrary to the above, from January 14, 1993 through October 31, 1994, ETL has been in possession of byproduct material not authorized under a specific or general license, and ETL is not exempt as provided in 10 CFR Parts 30 and 150. (01013)

- B. 10 CFR 30.36(b) requires, in part, that each licensee notify the Commission promptly, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license.

10 CFR 30.36(c)(1) requires, in part, that if a licensee does not submit an application for license renewal under 10 CFR 30.37, the licensee shall, on or before the expiration date specified in the license, terminate use of byproduct material; properly dispose of byproduct material; submit a completed form NRC-314, which certifies information concerning the disposition of material; and conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey.

Contrary to the above, as of August 31, 1991, the NRC license issued to ETL expired and the licensee did not submit an application for license renewal nor did it notify the Commission and request termination of its license, dispose of its byproduct material, submit a completed form NRC-314, and submit a report of the results of a survey of the premises where the licensed activities were carried out. (01023)

These violations represent a Severity Level III problem (Supplement VI).
Civil Penalty - \$3,000.

Pursuant to the provisions of 10 CFR 2.201, Environmental Testing Laboratories, Inc. is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued or other appropriate action taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, ETL may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should ETL fail to answer within the time specified, an order imposing the civil penalty will be issued. Should ETL elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of ETL is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

Dated at Rockville, Maryland
this ¹⁰th day of November 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket No. 030-29343
ENVIRONMENTAL TESTING) License No. 29-19310-02 (Expired)
LABORATORIES, INC. (ETL)) EA No. 94-179
Forked River, New Jersey)

ORDER TO CEASE AND DESIST USE AND
POSSESSION OF REGULATED BYPRODUCT MATERIAL

Environmental Testing Laboratories (ETL), Inc. (Licensee), is the holder of expired Byproduct Materials License No. 29-19310-02 (License) 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, not to exceed 15 millicuries per foil, in accordance with the conditions specified therein. The License expired on August 31, 1991.

II

The byproduct material has been transferred from the licensed address of 412 Route 9, Lanoka Harbor, New Jersey, 08834, to 512 Route 9, Forked River, New Jersey 08731, where it is currently stored. The Licensee did not submit an application for renewal of the License under 10 CFR 30.37 prior to its expiration, nor did the Licensee notify the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License. Although Mr. Walter Holm, Jr., the Radiation Safety Officer, stated ETL's intentions in a letter dated May 15, 1991, to terminate the license, as of this date, ETL has not transferred the licensed material to an authorized recipient, nor has ETL applied for an NRC license.

On January 14, 1993, the NRC, Region I, issued a Notice of Violation (NOV) to ETL, mailed to Mr. Walter Holm, for possession of material without a valid specific license. The letter forwarding the NOV directed the Licensee to place the licensed material in secure storage, not to use the material, and promptly transfer the licensed material to a lawful recipient. The Licensee has not responded to the Notice of Violation.

In addition, in a June 7, 1994 letter, the NRC again reminded ETL of the need to respond to the NRC Notice of Violation. ETL did not respond to a telephone message left on October 26, 1994. To date, ETL still possesses nickel-63 sealed sources without an NRC license and without applying for such a license.

III

ETL remains in possession of NRC-licensed radioactive material without a license. This is prohibited by Section 81 of the Atomic Energy Act of 1954, as amended. Based on the above, ETL has violated 10 CFR 30.3, which states that, except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general NRC license.

Furthermore, based on the above, notwithstanding the several notices concerning the above from the NRC and the corresponding opportunities to achieve compliance with applicable requirements, ETL has deliberately violated NRC requirements by possessing nickel-63 sealed sources without a license. This conclusion is based on the facts that ETL never filed a renewal

application before the License issued to ETL expired on August 31, 1991, as required by 10 CFR 30.37; ETL has not responded to the NRC Notice of Violation issued on January 14, 1993; ETL has not responded to an NRC letter, dated June 7, 1994, addressing its previous failure to respond to the Notice of Violation; ETL has refused to dispose of the radioactive material; and ETL possesses the radioactive material contrary to 10 CFR 30.3, without a valid NRC specific license.

Improper handling of the nickel-63 sealed sources can result in an unnecessary exposure to radiation. The Atomic Energy Act and the Commission's regulations require that possession of licensed material be under a regulated system of licensing and inspection. ETL's possession of NRC-licensed material without a valid NRC license, as documented in the January 14, 1993, Notice of Violation, and its unwillingness to respond to numerous NRC written and verbal communications to apply for an NRC license, demonstrate that it is either unable or unwilling to comply with NRC requirements.

Given the circumstances surrounding ETL's possession of the byproduct material and the failure to respond to communications with the NRC, I lack the requisite reasonable assurance that the health and safety of the public will be protected while ETL remains in possession of the radioactive material without the required NRC license.

IV

Accordingly, in accordance with Sections 81, 161b, 161c, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 20 and 30, IT IS HEREBY ORDERED THAT, ETL shall:

- A. Immediately cease and desist from any further use of byproduct material now in its possession.

- B. Maintain safe control over the byproduct material, as required by 10 CFR Part 20, by keeping the material in locked storage and not allowing any person access to the material, except for purposes of assuring the material's continued safe storage, until the material is transferred to a person authorized to receive and possess the material in accordance with the provisions of this Order and the Commission's regulations.

- C. Transfer the nickel-63 byproduct material within 30 days to a person authorized to receive and possess the material. If ETL does not have sufficient funds to complete the transfer, ETL must provide, within 10 days of this Order, evidence supporting such a claim by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555: (1) an estimate of the cost of the transfer and the basis for the estimate, including the license numbers and identities of the persons who have provided estimates of the cost of the transfer; (2) written statements from at least two banks stating that ETL does not qualify for a loan to pay for the transfer; (3) copies of the Federal

income tax returns of ETL for the years ending 1993, 1992, 1991, and 1990; and (4) a signed statement agreeing to allow the NRC to receive credit information on ETL from a credit agency. In addition, if ETL has not been able to find a person who will accept the byproduct material, ETL must provide to the Director, Office of Enforcement, at the address stated above, within 10 days of the date of this Order, the names of the persons who have been contacted regarding acceptance of the byproduct material and the dates that the contacts were made. A SUBMITTAL OF EVIDENCE SUPPORTING THE LACK OF SUFFICIENT FUNDS DOES NOT EXCUSE NONCOMPLIANCE WITH THIS ORDER.

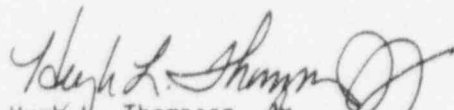
- D. At least two working days prior to the date of the transfer of the byproduct material, notify Dr. Ronald Bellamy, Chief, Nuclear Materials Safety Branch, NRC, Region I, by telephone (610-337-5200) so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.

- E. Within seven days following completion of the transfer, provide to the Regional Administrator, Region I, in writing, under oath or affirmation: (1) confirmation, on NRC Form 314, that the nickel-63 byproduct material has been transferred, (2) the last date that the byproduct material was used, (3) a copy of the survey performed in accordance with 10 CFR 30.36(c)(1)(v), and (4) a copy of the certification from the authorized recipient that the source has been received.

Copies of the response to this Order shall be sent to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Assistant General Counsel for Hearings and Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with NRC requirements.

FOR THE NUCLEAR REGULATORY COMMISSION



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

Dated at Rockville, Maryland
this ⁶th day of November 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20545-0001

February 15, 1995

EAs 94-179 and 94-226

Ms. Marlene Yourstone
President
Environmental Testing Laboratories, Inc.
512 Route 9
Forked River, New Jersey 08731

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$3,000

Dear Ms. Yourstone:

On November 10, 1994, the NRC sent you a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) describing two violations that were classified collectively as a Severity Level III problem; Notification of Consideration of the Imposition of Daily Civil Penalties; and Order to Cease and Desist Use and Possession of Regulated Byproduct Material. The violations in the Notice included possession of byproduct material without an NRC license since your NRC license had expired on August 31, 1991. A civil penalty in the amount of \$3,000 was proposed for the violations to emphasize the unacceptability of possessing byproduct material with an expired NRC license and the need for compliance with Commission requirements.

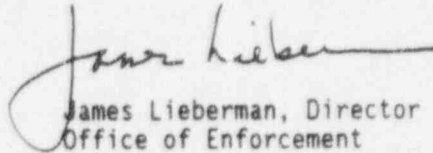
You have failed to respond in writing to this Notice and Order, even though a written response was due by December 10, 1994, and even though you were contacted on January 3, 6 and 18, 1995, regarding a response. Ultimately, you transferred the byproduct material to the manufacturer two and one-half months after the Order was issued. Due to your lack of responsiveness, we have concluded, for the reasons given in the Appendix attached to the enclosed Order Imposing A Civil Monetary Penalty, that the \$3,000 penalty as specified in the Notice should be imposed. Accordingly, we hereby serve the enclosed Order on Environmental Testing Laboratories, Inc. imposing a civil monetary penalty in the amount of \$3,000. As provided in Section IV of the enclosed Order, payment should be made 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 James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

Environmental Testing
Laboratories, Inc.

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosures will be placed in the NRC's Public Document Room.

Sincerely,



James Lieberman, Director
Office of Enforcement

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

Enclosures: As Stated

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
ENVIRONMENTAL TESTING) Docket No. 030-29343
LABORATORIES, INC.) License No. 29-19310-02 (Expired)
Philadelphia, Pennsylvania) EA 94-226
)

ORDER IMPOSING A CIVIL MONETARY PENALTY

I

Environmental Testing Laboratories (ETL), Inc. (Licensee), is the holder of expired Byproduct Materials License No. 29-19310-02 (License) 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, not to exceed 15 millicuries per foil, in accordance with the conditions specified therein. The License expired on August 31, 1991.

II

ETL did not submit an application for renewal of the License under 10 CFR 30.37 prior to its expiration on August 31, 1991, nor did ETL notify the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License 30 days prior to its expiration. Although Mr. Walter Holm, Jr., the Radiation Safety Officer, stated ETL's intentions in a letter dated May 15, 1991, to terminate the license, until January 24, 1995, ETL had not transferred the licensed material to an authorized recipient, nor had ETL applied for an NRC license.

On January 14, 1993, NRC Region I issued a Notice of Violation (NOV) at Severity Level IV to ETL, mailed to Mr. Walter Holm, for possession of

byproduct material without a valid NRC license. The letter forwarding the NOV directed the Licensee to place the byproduct material in secure storage, not to use the material, and promptly transfer the byproduct material to an authorized recipient. The Licensee did not respond to that NOV. In a June 7, 1994 letter, the NRC again reminded ETL of the need to respond to the NRC Notice of Violation. ETL did not respond. In addition, ETL did not respond to a telephone message left on October 26, 1994. On November 10, 1994, a written Notice of Violation and Proposed Imposition of Civil Penalty (Notice); Notification of Consideration of the Imposition of Daily Civil Penalties; and Order to Cease and Desist Use and Possession of Regulated Byproduct Material were served upon ETL. The Notice categorized the violation at Severity Level III since ETL had not transferred the material nor responded to the NOV issued on January 14, 1993. ETL has not responded in writing to the Notice, even though a response was required by December 10, 1994, and even though the NRC contacted ETL on January 3, 6 and 18, 1995, regarding submittal of a response. ETL has not responded to the Order to Cease and Desist as required. However, NRD, a sub-contractor of Perkin-Elmer (an authorized recipient) received the sealed source from ETL on January 24, 1995.

III

The NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated in the Notice, and that a penalty of \$3,000 should be imposed.

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 2.205, IT IS HEREBY ORDERED THAT:

ETL pay a civil penalty in the amount of \$3,000 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 James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738

V

ETL 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, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 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 I, 475 Allendale Road, King of Prussia, PA 19406.

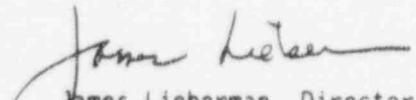
If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If ETL fails to request a hearing within 30

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

- (a) whether ETL was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and
- (b) whether on the basis of such violations, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 15th day of February 1995

APPENDIX

VIOLATIONS AND CONCLUSION

On November 10, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued based on a review of communications (and associated documents) conducted between the NRC and Environmental Testing Laboratories, Inc. (ETL) between November 1991 and October 26, 1994. ETL has not responded to the Notice, even though a response was required by December 10, 1994, and even though NRC contacted ETL on January 3, 6 and 18, 1995, to remind them of need to respond. The violations set forth in the Notice, as well as the NRC conclusion on this matter, are as follows:

1. Restatement of Violations

- A. 10 CFR 30.3 states, in part, that except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter.

Contrary to the above, from January 14, 1993 through October 31, 1994, ETL has been in possession of byproduct material not authorized under a specific or general license, and ETL is not exempt as provided in 10 CFR Parts 30 and 150. (01013)

- B. 10 CFR 30.36(b) requires, in part, that each licensee notify the Commission promptly, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license.

10 CFR 30.36(c)(1) requires, in part, that if a licensee does not submit an application for license renewal under 10 CFR 30.37, the licensee shall, on or before the expiration date specified in the license, terminate use of byproduct material; properly dispose of byproduct material; submit a completed form NRC-314, which certifies information concerning the disposition of material; and conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey.

Contrary to the above, as of August 31, 1991, the NRC license issued to ETL expired and the licensee did not submit an application for license renewal nor did it notify the Commission and request termination of its license, dispose of its byproduct material, submit a completed form NRC-314, and submit a report of the results of a survey of the premises where the licensed activities were carried out. (01023)

2. NRC Evaluation and Conclusion

ETL has failed to respond to the Notice. The November 14, 1993 letter accompanying the Notice provided a full explanation as to why a civil penalty was warranted in this matter. Absent a response from ETL, the NRC has no basis to retract the violations or withdraw the civil penalty. Since a response to the Notice was due by December 10, 1994, and ETL has not responded, despite several reminders, the NRC concludes that a civil penalty in the amount of \$3,000 should be imposed.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545-0001

April 14, 1995

EAs 94-179 and 94-226

Ms. Marlene Yourstone, President
Environmental Testing Laboratories, Inc.
512 Route 9
Forked River, New Jersey 08731

SUBJECT: ORDER RESCINDING ORDER IMPOSING MONETARY CIVIL PENALTY - \$3,000;
AND NOTICE OF TERMINATION OF LICENSE

Dear Ms. Yourstone:

Enclosed is an Order Rescinding Order Imposing Monetary Civil Penalty - \$3,000 and Notice of Termination of Byproduct Material License No. 29-19310-02. The License is being terminated because (1) Environmental Testing Laboratories, Inc. (ETL) License expired on August 31, 1991, (2) you failed to submit an application for renewal and subsequently advise the Commission, in writing, that you did not wish to renew the license, and (3) you transferred the byproduct material in your possession on January 24, 1995, after the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty, and Order to Cease and Desist on November 10, 1994. You also submitted a letter dated March 23, 1995, in which your Radiation Safety Officer indicates that the source has been transferred to an authorized recipient.

On January 14, 1993, NRC issued a Notice of Violation (NOV) to ETL for possession of byproduct material without a valid NRC license. ETL did not respond to the NOV. In a June 7, 1994 letter, the NRC again reminded ETL of the need to respond. On November 10, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) describing two violations that were classified collectively as a Severity Level III problem; and an Order to Cease and Desist Use and Possession of Regulated Byproduct Material. You failed to respond to the Notice and Order, even though a written response was due by December 10, 1994. In addition, you were contacted on January 3, 6, and 18, 1995 regarding a response. Although you ultimately transferred the byproduct material to the manufacturer, due to your lack of responsiveness, the NRC issued an Order Imposing a Civil Monetary Penalty in the amount of \$3,000 on February 15, 1995. The Order required that ETL pay a civil penalty in the amount of \$3,000 within 30 days of the date of the Order. You responded to the February 15, 1995 Order on March 23, 1995, requesting: (a) abatement of the imposed monetary civil penalty, or (b) a hearing, should abatement not be granted.

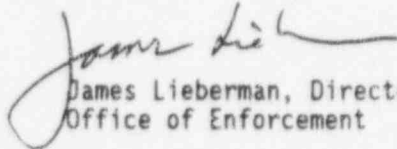
In view of the fact that the source ultimately was transferred to an authorized recipient, and the fact that the NRC is terminating your license, the NRC has decided to issue the enclosed Order Rescinding Order Imposing Monetary Civil Penalty which withdraws the civil penalty. Therefore, the NRC will not act upon your request for a hearing as none is warranted. Nonetheless, in the future, if you wish to engage in NRC-licensed activities,

you should be prepared to demonstrate to the NRC, pursuant to 10 CFR 30.32(b), in writing: (1) why the NRC should have confidence that you will comply with Commission requirements; and (2) your financial ability to safely perform NRC-licensed activities and pay the required fees if you are a licensee.

Should you have any questions regarding this matter, please contact Mr. Walt Pasciak, NRC, Region I, at (610) 337-5258.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be placed in the NRC Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

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

Enclosures:

1. Notice of Termination of License
2. Order Rescinding Order Imposing Monetary Civil Penalty

cc w/encl:
PUBLIC
Nuclear Safety Information Center (NSIC)
State of New Jersey

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket No. 030-29343
ENVIRONMENTAL TESTING) License No. 29-19310-02
LABORATORIES, INC.) EAs 94-179 and 94-226
Forked River, New Jersey)

ORDER RESCINDING
ORDER IMPOSING MONETARY CIVIL PENALTY
DATED FEBRUARY 15, 1995

I

Environmental Testing Laboratories, Inc. (ETL or Licensee) held Byproduct Materials License No. 29-19310-02 (License), issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorized the possession and use of byproduct material as foils containing nickel-63 in accordance with the conditions specified therein. The License was originally issued on July 31, 1986 and expired on August 31, 1991.

II

On January 14, 1993, NRC issued a Notice of Violation (NOV) to the Licensee because the Licensee did not submit an application for renewal of its License under 10 CFR 30.37, prior to its expiration, nor did the Licensee notify the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License. The Licensee did not respond to the NOV. On June 7, 1994, the NRC issued an Expired License Letter regarding the disposition of the radioactive material and reminded the Licensee of the need to respond to the NOV. Further, on November 10, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and Order to Cease and Desist Use and Possession of Regulated Byproduct Material. A civil penalty of \$3,000 was proposed to emphasize the unacceptability of possessing byproduct material

without a license. ETL did not respond to the Notice and Order. NRC Region I, contacted ETL on January 3, 6, and 18, 1995, regarding a response. The Licensee was contacted again on January 18, 1995, by NRC Region I staff to determine the disposition of the byproduct material. During the telephone conversation, ETL's Radiation Safety Officer stated that he had discussed possible ways of resolving this issue with Perkin-Elmer.

Subsequently, ETL transferred the byproduct material to a subcontractor (NRD) of Perkin-Elmer on January 24, 1995. However, on February 15, 1995, the NRC issued an Order Imposing the Civil Penalty because of ETL's lack of responsiveness. The Order required ETL to pay the civil penalty within 30 days of the date of the Order, or to request a hearing.

ETL submitted a letter to the NRC, dated March 23, 1995, in response to the February 15, 1995, Order Imposing the Imposing Civil Penalty, issued by the NRC. ETL's letter documented ETL's transfer of the byproduct material and requested abatement of the imposed civil penalty in its entirety for the following reasons: (1) the corporation is unable to fund payment, (2) there was no release of material, (3) ETL disposed of the source according to the regulations, and (4) no physical harm existed to anyone within ETL's facility. ETL also stated that if abatement was not to be granted, then ETL formally requested an Enforcement Hearing to further discuss this matter.

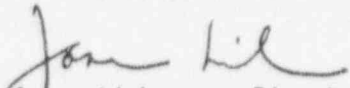
III

A review of ETL's letter dated March 23, 1995, stating that the material had been disposed of as well as the Licensee's request for abatement of the imposed fines in its entirety, has been completed. I find, given ETL's transfer of the byproduct material on January 24, 1995, in accordance with the Order to Cease and Desist Use and Possession of Regulated Byproduct Material, and the fact that the NRC is issuing a Notice of Termination of License concurrently on this date, that a basis exists for rescinding the penalty.

IV

Accordingly, pursuant to section 234 of the Atomic Energy Act of 1954, as amended, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT THE ORDER ISSUED TO THE LICENSEE ON FEBRUARY 15, 1995 (EA 94-179 and EA 94-226) IS RESCINDED.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 4th day of April 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
ENVIRONMENTAL TESTING) Docket No. 030-29343
LABORATORIES, INC.) License No. 29-19310-02
Forked River, New Jersey) EAs 94-179 and 94-226
)

NOTICE OF TERMINATION OF LICENSE

I

Environmental Testing Laboratories, Inc. (ETL or Licensee) held Byproduct Materials License No. 29-19310-02 (License), issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorized the possession and use of byproduct material as foils containing nickel-63 in accordance with the conditions specified therein. The License was originally issued on July 31, 1986 and expired on August 31, 1991.

II

The Licensee did not submit an application for renewal of the License under 10 CFR 30.37, prior to its expiration, nor did the Licensee notify the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License. On January 14, 1993, the NRC Region I, issued a Notice of Violation (NOV) to the Licensee for failure to request renewal (file a notice of non-renewal and transfer the byproduct material) prior to the expiration of the License. The letter forwarding the NOV directed ETL to place the radioactive material in its possession in secure storage until such time as it acquired an NRC license, and stated that no other use of that material was authorized and to promptly transfer the byproduct material to an authorized recipient. ETL

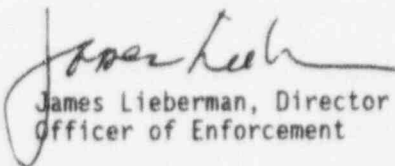
did not respond to the Notice of Violation. On June 7, 1994, the NRC issued an Expired License Letter regarding the disposition of the radioactive material and reminded ETL of the need to respond to the NOV.

On November 10, 1994, the NRC issued to ETL a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and Order to Cease and Desist Use and Possession of Regulated Byproduct Material. A civil penalty of \$3,000 was proposed to emphasize the unacceptability of possessing byproduct material without a license. ETL did not respond to the Notice and Order. NRC Region I, contacted ETL on January 3, 6, and 18, 1995, regarding a response. ETL was contacted on January 18, 1995, by NRC Region I staff to determine the disposition of the byproduct material. During the telephone conversation, ETL's Radiation Safety Officer stated that he had discussed possible ways of resolving this issue with Perkin-Elmer. Subsequently, ETL transferred the byproduct material to a subcontractor (NRD) of Perkin-Elmer on January 24, 1995.

On February 15, 1995, NRC, Region I, issued an Order Imposing a Civil Penalty - \$3,000 because of ETL's lack of responsiveness. The Order required ETL to pay the civil penalty within 30 days of the date of the Order. ETL responded in a letter dated March 23, 1995, documenting its transfer of the byproduct material. Transfer of the byproduct material was verified by NRC with Perkin-Elmer during a telephone conversation on February 1, 1995, and further verified by a letter dated February 1, 1995.

Accordingly, given ETL's failure to renew the License, ETL's transfer of the byproduct material in accordance with the Order to Cease and Desist Use and Possession of Regulated Byproduct Material, ETL's submission of a letter, dated March 23, 1995, stating that the material had been disposed of and verification on February 1, 1995, that the Byproduct Material was in fact transferred to Perkin-Elmer on January 24, 1995, License No. 29-19310-02 is hereby terminated.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Officer of Enforcement

Dated at Rockville, Maryland
this 14th day of April 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20556-0001

March 24, 1995

EA 95-024

High-Way Engineering & Survey Co.
ATTN: Mr. Art High
RR #1, Box 485 AA
Bonners Ferry, ID 83805

SUBJECT: ORDER TO CEASE AND DESIST USE AND POSSESSION OF REGULATED
BYPRODUCT MATERIAL

Dear Mr. High:

High-Way Engineering and Survey Co. (Licensee), is the holder of expired Byproduct Materials License No. IDA-234, Amendment 3 (License), which was issued by the State of Idaho and subsequently became a Nuclear Regulatory Commission (NRC or Commission) License on April 26, 1991, when the Commission reasserted its authority over Idaho licensees by an order on that same date. The License, which authorized the possession and use of 10 millicuries of cesium-137 and 50 millicuries of americium-241:beryllium sealed sources in gauges, expired on June 30, 1991, but was not terminated by the NRC pursuant to 10 CFR 30.36. This Order is being issued because you failed to apply for license renewal, pursuant to 10 CFR 30.37, and have not met the disposal requirements of 10 CFR 30.36 applicable at the time your NRC license expired.

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. You were provided telephone notifications of the pending license expiration prior to the License expiration on June 30, 1991. Since then the NRC has initiated several telephone conversations and correspondence with you concerning the status of your NRC license. It had been our understanding that it was your intent to either transfer the byproduct material to another licensee or become properly licensed. However, you have neither demonstrated a willingness to divest yourself of the byproduct material under the conditions you had previously expressed nor become properly licensed. Therefore, the NRC is issuing the enclosed Order requiring that you cease and desist use of regulated byproduct material.

The enclosed Order to Cease and Desist Use and Possession of Regulated Byproduct Material requires that you: (1) cease and desist all use of byproduct material; (2) within 30 days of the date of the Order, transfer the remaining byproduct material in your possession to an authorized recipient; (3) prior to the transfer, continue to maintain safe control over the byproduct material; (4) notify the NRC Region IV 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 IV: (a) confirmation in writing and under oath (NRC Form 314) that the cesium-137 and americium-241:beryllium sealed sources have been transferred, (b) the last date that the byproduct material was used, (c) a copy of the survey performed in accordance with 10 CFR 30.36, as required by the regulation at the time the License expired, and (d) 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 High-Way Engineering & Survey Co. does not transfer or promptly dispose of the byproduct material as provided in the enclosed Order, you are hereby notified that the NRC intends to consider escalated enforcement action including imposing daily civil penalties for each day that you remain in noncompliance.

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". Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section.

If you have any questions concerning this Order, please contact Mr. James Lieberman, Director, Office of Enforcement, at (301) 415-2741.

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.

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. 030-32271
License No. IDA-234 (Expired)

Enclosures:

1. Order to Cease and Desist Use and Possession of Regulated Byproduct Material
2. Enforcement Policy
3. NRC Form 314

cc w/enclosures: State of Idaho

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
HIGH-WAY ENGINEERING & SURVEY CO. and)
ART HIGH, dba) Docket No. 030-32271
HIGH-WAY ENGINEERING & SURVEY CO.) License No. IDA-234 (Expired)
Bonners Ferry, Idaho, 83805) EA No. 95-024
)

ORDER TO CEASE AND DESIST USE AND
POSSESSION OF REGULATED BYPRODUCT MATERIAL

I

High-Way Engineering & Survey Co. (Licensee), is the holder of expired Byproduct Materials License No. IDA-234 (License) which was issued by the State of Idaho and subsequently became a Nuclear Regulatory Commission (NRC or Commission) license on April 26, 1991, when the State of Idaho discontinued its regulation of radioactive materials. Mr. Art High (owner) is the president of the Licensee. The License authorized the possession and use of 10 millicuries of cesium-137 and 50 millicuries of americium-241:beryllium in sealed sources in gauges. The License expired on June 30, 1991.

II

On January 24, 1995, the Licensee informed the NRC that it still has a Campbell-Pacific nuclear gauge in its possession, which is currently stored in a locked storage shed on the Licensee's property near Bonners Ferry, Idaho. The Licensee neither submitted an application for renewal of the License prior to its expiration on June 30, 1991, as required by 10 CFR 30.37 nor notified the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License. Mr. Art High, the owner and Radiation Safety Officer, stated the Licensee's intention to terminate the License in telephone conversations on

February 27 and March 23, 1992, and again on January 19, 1995. As of the date of this order, the Licensee has neither transferred the licensed material to an authorized recipient nor applied for an NRC license.

The Licensee was notified of the pending expiration of its License in telephone conversations with the NRC Region IV Office staff prior to the License expiration on June 30, 1991. The NRC also corresponded with the Licensee concerning the status of its NRC license. Specifically, an NRC letter dated February 28, 1992, reiterated the Licensee's stated intent to divest itself of the Campbell-Pacific Nuclear Model MC-3 series moisture density gauge and requested that by March 20, 1992, the Licensee transfer all licensable material to a properly authorized recipient and provide a completed NRC Form 314 to assure that the transfer has been completed. A second NRC letter dated March 25, 1992, again reiterated the Licensee's intent to divest itself of the gauge and asserted the basis for the NRC's authority to license byproduct materials and to charge fees. The Licensee also stated its intent during a May 4, 1992 telephone conversation with the NRC to either transfer the byproduct material to another licensee or become properly licensed.

On March 17, 1994, a special, unannounced inspection was conducted by the NRC. The results of the inspection were documented in an April 15, 1994 letter. During the inspection, the Licensee stated that it possessed one gauge which was maintained in locked storage and that it planned to sell the gauge and terminate the License.

During a January 19, 1995 telephone conversation, the Licensee stated that the reasons it had not divested itself of the gauge was that it had been unable to sell the gauge and that the manufacturer wanted a significant amount of money to take possession of the gauge. On January 24, 1995, the Licensee was again contacted by telephone and, despite being told that the gauge manufacturer would take possession of the gauge for no charge, the Licensee refused to transfer it.

III

The Licensee remains in possession of NRC-licensed byproduct material with an expired NRC license. Possession of such material is prohibited. At the time the License expired, 10 CFR 30.36(c) required NRC licensees, in the absence of a timely request for license renewal, to terminate licensed activities and to properly dispose of licensed material on or before the expiration date of the license. The Licensee has violated this requirement by continuing to possess a Campbell-Pacific Nuclear Model MC-3 series moisture density gauge after its License expired on June 30, 1991.

Improper handling of the cesium-137 and americium-241:beryllium sealed sources can result in an unnecessary exposure to radiation. The Atomic Energy Act and the Commission's regulations require that possession of NRC-licensed material be under a regulated system of licensing and inspection. The Licensee's possession of NRC-licensed material without a valid NRC license and its unwillingness to respond to numerous NRC written and verbal communications to

apply for an NRC license, demonstrate that it is either unable or unwilling to comply with NRC requirements.

Given the circumstances surrounding the Licensee's possession of the byproduct material and its failure to respond to communications with the NRC, I lack the requisite reasonable assurance that the health and safety of the public will be protected while the Licensee remains in possession of the radioactive material without the required NRC license.

IV

Accordingly, in accordance with Sections 81, 161b, 161c, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 20 and 30, IT IS HEREBY ORDERED THAT High-Way Engineering & Survey Co. and Mr. Art High, dba High-Way Engineering & Survey Co. shall:

- A. Immediately cease and desist from any further use of byproduct material now in their possession, with the exception that sealed source(s) containing cesium-137 or americium-241:beryllium shall be tested for leakage by a person authorized to perform the test prior to transfer of the source(s) to another person or entity, if a leak test has not been performed within the last six months prior to the transfer.
- B. Maintain safe control over the byproduct material, as required by 10 CFR Part 20, by keeping the material in locked storage and not allowing any person access to the material, except for purposes of assuring the

material's continued safe storage and the testing required by Paragraph A, until the material is transferred to a person authorized to receive and possess the material in accordance with the provisions of this Order and the Commission's regulations.

- C. Transfer all byproduct material in their possession within 30 days to a person authorized to receive and possess the material. If the Licensee does not have sufficient funds to complete the transfer, the Licensee must provide, within 10 days of this Order, evidence supporting such a claim by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555: (1) an estimate of the cost of the transfer and the basis for the estimate, including the license numbers and identities of the persons who have provided estimates of the cost of the transfer; (2) written statements from at least two banks stating that neither Art High, nor High-Way Engineering & Survey Co., qualify for a loan to pay for the transfer; (3) copies of the Federal income tax returns of Art High, and High-Way Engineering & Survey Co., for the years 1993, 1992, 1991, and 1990; and (4) a signed statement agreeing to allow the NRC to receive credit information on Art High and High-Way Engineering & Survey Co., from a credit agency. In addition, if the Licensee has not been able to find an authorized person who will accept the byproduct material, the Licensee must provide to the Director, Office of Enforcement, at the address stated above, within 10 days of the date of this Order, the names of the persons who have been contacted regarding acceptance of the byproduct material and the dates

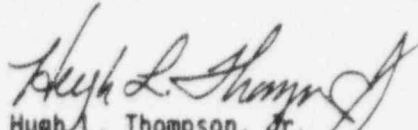
that the contacts were made. A SUBMITTAL OF EVIDENCE SUPPORTING THE LACK OF SUFFICIENT FUNDS DOES NOT EXCUSE NONCOMPLIANCE WITH THIS ORDER.

- D. At least two working days prior to the date of the transfer of the byproduct material, notify Dr. D. Blair Spitzberg, Chief, Nuclear Materials Licensing Branch, NRC, Region IV, by telephone (817-860-8191) so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.
- E. Within seven days following completion of the transfer, provide to the Regional Administrator, Region IV, in writing, under oath or affirmation: (1) confirmation on NRC Form 314, as required by 10 CFR 30.36(c) at the time the License expired, that the cesium-137 and americium-241:beryllium byproduct material have been transferred, (2) the last date that the byproduct material was used, (3) a copy of the survey performed in accordance with 10 CFR 30.36, as required by the regulation at the time the License expired, and (4) a copy of the certification from the authorized recipient that the source has been received.

Copies of the response to this Order shall be sent to the Regional Administrator, Region IV, 611 Ryan Plaza Dr., Suite 400, Arlington, Texas 76011-8064, and to the Assistant General Counsel for Hearings and Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with NRC requirements.

FOR THE NUCLEAR REGULATORY COMMISSION



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

Dated at Rockville, Maryland
this 24th day of March 1995



NUCLEAR REGULATORY COMMISSION

REGION IV

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

June 14, 1995

EA 95-024

High-Way Engineering & Survey Co.
ATTN: Mr. Art High
RR #1, Box 485 AA
Bonners Ferry, Idaho 83805

SUBJECT: NOTICE OF TERMINATION OF NRC LICENSE IDA-234

In accordance with 10 CFR 30.36, we are providing notification that NRC Byproduct Material License No. IDA-234 is hereby terminated. The License is being terminated because (1) your NRC license expired on June 30, 1991; (2) you failed to submit an application for renewal prior to the expiration date, or advise the Commission, in writing, that you did not wish to renew the license; (3) you transferred all regulated byproduct material in your possession to an authorized recipient, as required by Order dated March 24, 1995; and (4) you submitted a signed NRC Form 314, "Certification of Disposition of Material", dated May 8, 1995, certifying the transfer.

Normally, additional escalated enforcement action would be taken based on your possession of regulated byproduct material after June 30, 1991, the expiration date of the License, a violation of 10 CFR 30.3. However, such action is not being taken because you transferred the regulated byproduct material. In the future, if you wish to engage in NRC-licensed activities, you should be prepared to demonstrate to the NRC, pursuant to 10 CFR 30.32(b), in writing: (1) why the NRC should have confidence that you will comply with Commission requirements; and (2) your financial ability to safely perform NRC-licensed activities and pay the required fees if you are a licensee.

Should you have any questions regarding this matter, please contact me at 817-860-8191 or Ms. Christi Hernandez at 817-860-8217.

Sincerely,

D. Blair Spitzberg, Ph.D., Chief
Nuclear Materials Licensing Branch

License: IDA-234
Docket: 030-31510

Enclosure: Termination of NRC License IDA-234



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

April 20, 1995

EA 92-112

Honeywell Incorporated
ATTN: Mr. Thomas Montag, Director
Environmental Health and Safety
Honeywell Plaza
Post Office Box 524
Minneapolis, Minnesota 55440-0524

Dear Mr. Montag:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$20,000 (NRC INVESTIGATION REPORT NO. 3-91-003)

This refers to the investigation conducted by the NRC Office of Investigations (OI) concerning the September 28, 1990, transfer of licenses and change in ownership of NRC-licensed materials. On that date, Honeywell Incorporated "spun off" its Defense Systems Division and created Alliant Techsystems as a totally separate entity. Honeywell then, without NRC authorization, transferred three NRC licenses and NRC-licensed materials to Alliant Techsystems. The OI investigation concluded that the unauthorized transfer was deliberate because the then-Corporate Director of Environmental Management for Honeywell knew that authorization must be obtained prior to such transfer. Therefore, the transfers constituted deliberate violations of 10 CFR 30.34(b), 10 CFR 40.46, and 10 CFR 40.51.

Copies of pertinent portions of the OI report were provided to counsel on January 31, 1995, and on February 22, 1995, a transcribed enforcement conference was held in the NRC Region III office with Mr. William L. Axelson, Director, Division of Radiation Safety and Safeguards. Ms. Jennifer E. Crawford, Counsel, Corporate Compliance, represented Honeywell Incorporated and Ms. Caren M. Fitzgerald, Counsel, represented Alliant Techsystems at the enforcement conference.

At the enforcement conference, the root cause of the violations was attributed by the companies to unfamiliarity with transferring NRC licenses and belief of the then-Director of Environmental Management for Honeywell that "inside trader" constraints placed on Honeywell by the Securities and Exchange Commission (SEC) prohibited divulging information to NRC about the transfer prior to the transaction. The company representatives did not take exception to the violations but did object to the characterization of the violations as deliberate. The NRC, on the other hand, has determined that the violations were deliberate because in June 1990 an NRC inspector informed the Honeywell radiation safety officer (RSO) of the procedures for transferring ownership, and the RSO provided the information to his supervisor, the Honeywell Director of Environmental Management. The procedures included notifying the NRC and receiving permission before the transfer of ownership. Furthermore, in sworn

statements to OI, both the Director of Environmental Management and the RSO stated they were aware of the NRC transfer requirements.

These deliberate violations are of very significant concern to the NRC because they reflect on the unwillingness of the managers responsible for managing the radiation safety programs to comply with what they knew to be the applicable NRC requirements. Therefore, the violations have been categorized collectively as a Severity Level II 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 need for all individuals working under an NRC-licensed program to conduct all facets of licensed activities with integrity and ensure that all NRC requirements are strictly adhered to, I have decided, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$20,000 for the Severity Level II problem. The base value of a civil penalty for a Severity Level II problem is \$8,000. The civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy were considered as follows.

While Alliant eventually notified NRC approximately two and one half months after the transfer of the license and the licensed material had taken place, NRC identified the violations. Therefore, the base civil penalty was escalated 50 percent. The base civil penalty was escalated 100 percent because, as noted above, Honeywell had a prior opportunity to prevent the violations because an NRC inspector informed the RSO of the proper procedures for transferring licensed materials in June 1990.

While Honeywell did take corrective actions to reduce the immediate consequences of the unauthorized transfer of licenses and licensed material to Alliant, at the time of the enforcement conference, Honeywell managers had not addressed the violations and the causal factors with those responsible for the other NRC licenses that Honeywell still possesses. Therefore neither escalation nor mitigation is appropriate based on this factor. Consideration was also given to mitigating the civil penalty based on the licensee performance factor because, for the three NRC licenses in question, there were no violations identified during the two prior inspections (August 1988 and June 1990). However, the NRC staff did not apply mitigation based on the licensee performance factor because the violations are deliberate. This exercise of discretion in cases involving willfulness is permitted under the Enforcement Policy in Section VII, and is intended to reflect the level of NRC's concern regarding willful violations and ensure that the enforcement action conveys the appropriate message to the licensee. The other adjustment factors in the Enforcement Policy were considered and no further adjustment to the base civil penalty was appropriate. Therefore, on balance, the base civil penalty was escalated 150 percent.

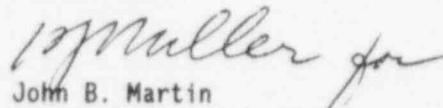
In a related action, a separate Notice of Violation has been issued to Alliant Techsystems for receipt of source and byproduct material without a valid NRC license. A copy will be sent to you under separate cover.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. At the enforcement conference, your Counsel for Corporate Compliance committed to clearly establishing the responsibility and authority of the RSO(s) for the remaining Honeywell licenses to take actions independently as necessary to assure that compliance with NRC requirements is maintained at all times. Your response should specifically describe your actions to address this issue. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your responses will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not contain any personal privacy, proprietary, or safeguards 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.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Public Law No. 96-511.

Sincerely,


John B. Martin
Regional Administrator

Dockets No. 040-07982; 030-18699; 030-20529
Licenses No. SUB-971; 22-01870-19; 22-14386-01

Enclosure:
Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/encl: Jennifer E. Crawford, Esq.
Counsel, Corporate Compliance,
Honeywell Incorporated

Caren M. Fitzgerald, Esq.
Counsel, Alliant Techsystems Inc.

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Honeywell Incorporated
Minneapolis, Minnesota

Dockets No. 040-07982;
030-18699; 030-20529
Licenses No. SUB-971;
22-01870-19; 22-14386-01
EA 92-112

During an NRC investigation conducted from February 28, 1991 through April 29, 1992, by the NRC Office of Investigations, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 30.34(b) requires that no license issued or granted pursuant to the regulations in this part and parts 31 through 36, and 39, nor any right under a license shall be transferred, assigned, or in any manner disposed of either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

10 CFR 40.46 requires that no license issued or granted pursuant to the regulations in this part shall be transferred, assigned, or in any manner disposed of either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this act and shall give its consent in writing.

Contrary to the above, on September 28, 1990, Honeywell Incorporated transferred licenses number SUB-971; 22-01870-19; and 22-14386-01 to Alliant Techsystems Incorporated without obtaining the consent of the Commission in writing. (01012)

- B. 10 CFR 40.51(a) requires that no licensee shall transfer source or byproduct material except as authorized pursuant to this section.

10 CFR 40.51(c) requires, in part, that before transferring source or byproduct material to a specific licensee of the Commission, the licensee transferring the material shall verify that the transferee's license authorizes receipt of the material to be transferred.

Contrary to the above, on September 28, 1990, Honeywell Incorporated transferred source and byproduct material to Alliant Techsystems Incorporated and did not verify prior to the transfer that Alliant Techsystems Incorporated was authorized to receive such material. (01022)

Notice Of Violation

This is a Severity Level II problem (Supplements VI and VII).
Civil Penalty - \$20,000.

Pursuant to the provisions of 10 CFR 2.201, Honeywell Incorporated (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a demand for information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

Notice Of Violation

The responses noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351.

Dated at Lisle, Illinois
this 20th day of April 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

February 23, 1995

EA 95-007

IHS Geotech & CMT, Inc.
ATTN: Clarence E. Hall, Jr.
2405 Boardwalk
San Antonio, Texas 78217

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$500 (NRC Inspection Report No. 999-90004/94-06)

This refers to the inspection conducted December 16, 1994, to January 12, 1995, of activities conducted at military installations in the state of Texas which are considered areas under exclusive federal jurisdiction. The results of this inspection were documented in a report issued on January 23, 1995, and were discussed with you at an enforcement conference in NRC's Arlington, Texas office on February 6, 1995.

Based on the results of the inspection and the discussions during the enforcement conference, the NRC has determined that IHS Geotech & CMT, Inc. (IHS), violated NRC requirements by using NRC-licensed material without authorization in areas under exclusive federal jurisdiction. Specifically, IHS used moisture/density gauges containing sealed sources of radioactivity on several occasions between January 1991 and December 1994 at various military installations in Texas without obtaining an NRC license, or, in lieu of a specific license, following NRC's permitted practice of filing an NRC Form-241 and paying the associated fee. At the enforcement conference, you indicated that this violation occurred because of a change in personnel and the fact that you had no system in place to remind you to contact the NRC prior to using moisture/density gauges in locations where the federal government has jurisdiction.

The NRC considers violations of this requirement a matter of significant regulatory concern because the failure to obtain NRC authorization for such activities denies NRC the opportunity to assure that IHS personnel are qualified and trained to perform such work and denies the NRC the opportunity to conduct inspections while work is in progress to assure compliance with all NRC radiation safety requirements. Thus, this violation has been classified at Severity Level III, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C.

The NRC acknowledges that IHS took immediate action to come into compliance in December 1994 when this violation was identified and that IHS has since established a system for reminding company personnel of the need to contact the NRC prior to conducting work in areas under exclusive federal jurisdiction. Notwithstanding these corrective actions, to emphasize the significance of using moisture/density gauges without authorization and the importance of ensuring compliance in the future, I have been authorized to

issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$500 for the Severity Level III violation discussed above and in the Notice.

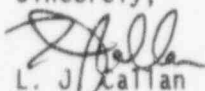
The base value of a civil penalty for a Severity III violation is \$500. The civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy were considered as follows: 1) your corrective actions warranted 50% mitigation; 2) your generally good performance as a licensee of the state of Texas also warranted 50% mitigation; and 3) the duration of this violation, extending from January 1991 to December 1993, warranted 100% escalation. The other adjustment factors in the Enforcement Policy were considered, and no further adjustment to the base civil penalty was appropriate. Thus, on balance, no net adjustment to the base civil penalty value was made.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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 Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards 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.

The responses directed by this letter and the enclosed Notice 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,



L. J. Callan
Regional Administrator

Docket No. 999-90004
Texas License No. LO4153

Enclosures:

- 1) Notice of Violation and Proposed Imposition of Civil Penalty
- 2) List of Enforcement Conference Participants

cc w/Enclosures: State of Texas

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

IHS Geotech & CMT, Inc.
San Antonio, Texas

Docket No. 999-90004
Texas License No. L04153
EA 95-007

During an NRC inspection conducted December 16, 1994 to January 12, 1995, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 30.3 states, in part, that except for persons exempted, no person shall possess or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations.

Contrary to the above, on numerous occasions between January 1991 and December 1994, IHS Geotech & CMT, Inc. (IHS) possessed and used byproduct material at various military facilities under exclusive federal jurisdiction without being authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations, and IHS was not exempted. (01013)

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$500

Pursuant to the provisions of 10 CFR 2.201, IHS Geotech & CMT, Inc. is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of

the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Dated at Arlington, Texas
this 23rd day of February 1995

Enclosure 2

Enforcement Conference participants

February 6, 1995
NRC Region IV, Arlington, Texas

IHS Geotech & CMT, Inc.

Clarence E. Hall, Jr., Manager

U.S. Nuclear Regulatory Commission, Region IV

Samuel J. Collins, Director, Division of Radiation Safety & Safeguards
Linda Howell, Chief, Nuclear Materials Inspection Branch
Mark Shaffer, Senior Radiation Specialist, NMIB
William L. Brown, Regional Counsel
William B. Jones, Enforcement Specialist
Gary F. Sanborn, Enforcement Officer

Observers

Rod Wright, Texas Dept. of Health (BRC), Radiation Control Program Manager,
Region 2/3



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 4, 1995

EA 95-007

IHS Geotech & CMT, Inc.
ATTN: Clarence E. Hall, Jr.
2405 Boardwalk
San Antonio, Texas 78217

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$500

Dear Mr. Hall:

This refers to your "Answer to a Notice of Violation" and "Reply to a Notice of Violation," both dated March 21, 1995, which you submitted in response to a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you on February 23, 1995. Our letter and Notice described a violation involving your use of NRC-licensed material without authorization in areas under exclusive federal jurisdiction within the state of Texas.

To emphasize the significance of using moisture/density gauges without authorization and the importance of ensuring compliance with NRC requirements in the future, a civil penalty of \$500 was proposed.

In your response, you admitted the violation but requested mitigation of the civil penalty because you disagreed with the NRC's application of the duration adjustment factor in determining the civil penalty amount.

After consideration of your response, we have concluded for the reasons given in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty (Order) that the duration of the noncompliance was appropriately used as a basis for determining the civil penalty amount and, therefore, that the \$500 civil penalty is appropriate.

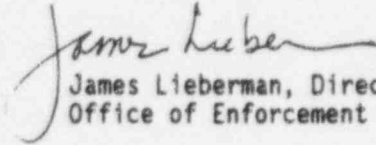
Accordingly, we serve the enclosed Order on IHS Geotech & CMT, Inc., imposing a civil monetary penalty in the amount of \$500. As provided in Section IV of the enclosed Order, payment should be made within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738. We will review the effectiveness of your corrective actions during a subsequent inspection.

IHS Geotech & CMT, Inc.

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in cursive script that reads "James Lieberman". The signature is written in dark ink and is positioned above the typed name and title.

James Lieberman, Director
Office of Enforcement

Docket No. 999-90004
Texas License No. L04153
Enclosure: As Stated

cc w/enclosure: State of Texas

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

IHS GEOTECH & CMT, Inc.
San Antonio, Texas

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)
)
)
)

Docket No. 999-90004
Texas License No. L04153
EA 95-007

ORDER IMPOSING CIVIL MONETARY PENALTY

I

IHS Geotech & CMT, Inc., (Licensee) is the holder of Texas Radioactive Material License L04153 issued by the Texas Bureau of Radiation Control. The license authorizes the Licensee to possess and use sealed sources of various radioisotopes in moisture/density gauges at temporary job sites throughout Texas, except in areas under exclusive federal jurisdiction. In areas of exclusive federal jurisdiction, these activities can only be conducted pursuant to an NRC specific or general license.

II

An inspection of the Licensee's activities in areas under exclusive federal jurisdiction, i.e., certain military installations located in Texas, was conducted December 16, 1994 to January 12, 1995. 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 February 23, 1995. The Notice states the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in letters dated March 21, 1995. In its response, the Licensee admitted the violation but requested mitigation because it disagreed with the NRC's application of the duration adjustment factor in determining the civil penalty amount.

III

After consideration of the Licensee's response and argument for mitigation contained therein, the NRC staff has determined as set forth in the Appendix to this Order, that the violation occurred as stated, that the duration of the noncompliance was appropriately used as a basis for deriving the civil penalty amount and, therefore, that the \$500 civil penalty proposed for the violation designated in the Notice should be imposed.

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 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$500 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 James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

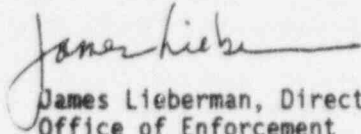
The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

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:

Whether, on the basis of the violation admitted by the Licensee, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 4th day of May 1995

APPENDIX

EVALUATION AND CONCLUSION

On February 23, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. IHS Geotech & CMT, Inc. (Licensee) responded to the Notice on March 21, 1995. In its response, the Licensee admitted the violation but requested mitigation because it disagreed with the NRC's application of the duration adjustment factor in determining the civil penalty amount. A restatement of the violation and the NRC's evaluation and conclusion regarding the Licensee's request follow:

Restatement of Violation

10 CFR 30.3 states, in part, that except for persons exempted, no person shall possess or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations.

Contrary to the above, on numerous occasions between January 1991 and December 1994, IHS Geotech & CMT, Inc. (IHS) possessed and used byproduct material at various military facilities under exclusive federal jurisdiction without being authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations, and IHS was not exempted. (01013)

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$500

Summary of Licensee's Response to Violation

The Licensee admitted the violation but requested mitigation because it disagreed with the NRC's application of the duration adjustment factor in determining the civil penalty amount.

Summary of Licensee's Request for Mitigation

The Licensee said "Once overlooked, the event had occurred. Only an inspection, as occurred, or some other event, would terminate the period of violation. A more timely review of NRC records or periodic inspections by Radiation Safety Officers on the military installations of San Antonio would have worked to my advantage."

NRC Evaluation of Licensee's Request for Mitigation

The Licensee's argument suggests that someone other than the Licensee, i.e., the NRC or military officials, should have discovered the violation, resulting in it being corrected earlier than it was. This is contrary to a basic premise of the NRC's Enforcement Policy and regulatory philosophy, that it is licensees who are responsible for assuring compliance with all applicable requirements. It is not acceptable for a licensee to remain in noncompliance regardless of the frequency of NRC inspections. In addition, due to the Licensee's noncompliance with NRC requirements, the NRC staff was unaware of the Licensee's activities under NRC jurisdiction and, thus, could not conduct inspections.

The NRC staff considered it significant that the violation continued for nearly four calendar years. This effectively denied the NRC staff the opportunity, over an extended period of time, to ensure that IHS Geotech & CMT, Inc., was appropriately licensed by the state of Texas and was conducting its activities safely when working in areas of exclusive federal jurisdiction.

The NRC's Enforcement Policy (Section VI.B.2.(f)), states that a base civil penalty may be escalated by as much as 100% to reflect the added technical or regulatory significance resulting from the violation or the impact of it remaining uncorrected for more than one day. The Policy adds that this factor should normally be applied in cases involving particularly safety significant violations or one where a significant regulatory message is warranted.

Although the NRC staff developed no evidence to suggest that the Licensee's activities were performed unsafely, the NRC staff has concluded that the lack of opportunity to verify that the Licensee was operating safely over nearly four years warranted an increase in the base civil penalty value to emphasize the regulatory significance of this violation.

When balanced against the remaining adjustment factors, this resulted in a proposed civil penalty of \$500. The NRC staff notes that the penalty proposed was below the costs the Licensee would have incurred had the Licensee either obtained an NRC license to conduct these same activities during the period of noncompliance or followed the accepted NRC practice of submitting a reciprocity form (Form 241) and paying the associated reciprocity fees for each of the years in question.

NRC Conclusion

The NRC staff concludes that the duration factor was appropriately considered in determining the civil penalty amount and that the \$500 civil penalty was correctly assessed. Consequently, the proposed civil penalty in the amount of \$500 should be imposed.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

April 11, 1995

EA 94-241

Jones Inspection Services
ATTN: Mr. Otho G. Jones, Proprietor
103 North Green
Post Office Box 277
Alderson, Oklahoma 74522

SUBJECT: ORDER SUSPENDING AUTHORITY UNDER GENERAL LICENSE (EFFECTIVE IMMEDIATELY)

Dear Mr. Jones:

The enclosed Order Suspending Authority Under General License (Effective Immediately) (Order) supersedes the Order to Cease and Desist Use and Possession of Regulated Byproduct Material in NRC Jurisdiction (Effective Immediately) issued on July 26, 1994, to Jones Inspection Services, holder of an Agreement State Radioactive Material License ARK-740-BP-1-94. This Order, which applies to you, Mr. Otho G. Jones, dba Jones Inspection Services, and all successor entities wherein you are a corporate officer or an owner, suspends your authority to conduct activities in areas under NRC jurisdiction under the general license granted by 10 CFR 150.20. In addition, before the NRC will consider any written request you may file in the future to relax or rescind this Order, you are required to: (a) demonstrate your understanding of applicable NRC requirements for the possession, storage and use of regulated byproduct material in NRC jurisdiction prior to filing an NRC Form 241 for performance of licensed activities under the provisions of 10 CFR 150.20; (b) retain the services of an independent individual or organization (consultant) to perform a program and process implementation audit to determine compliance with NRC requirements, (c) provide the results of such audits to the NRC, and (d) commit to provide notice to the NRC seven days prior to working in any areas of NRC jurisdiction.

This action is being taken because of the careless disregard for NRC regulations that you demonstrated through the use and storage of regulated byproduct material in a non-Agreement State (Oklahoma) without first acquiring an NRC specific use license as required by 10 CFR 30.3 or determining and complying with the reciprocity requirements as stated in 10 CFR 150.20. It was incumbent on you, as the individual utilizing byproduct materials, to understand both the Agreement State and Federal regulations governing their use. During a transcribed enforcement conference conducted on January 31, 1995, you acknowledged your ignorance of NRC requirements and that you made no attempt to determine NRC requirements prior to working in Oklahoma.

You, as the sole proprietor and Radiation Safety Officer, must assure safe use of byproduct materials to protect the health and safety of the public and individual users. You failed to meet this standard and the trust that is placed in byproduct material user licensees. As important, your actions in

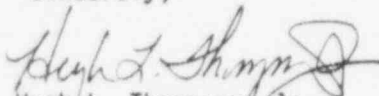
not notifying the NRC in accordance with 10 CFR 150.20 precluded the independent inspections that the NRC conducts to assure the safe use of byproduct materials within NRC jurisdiction. The NRC has found that the health and safety of the public cannot be assured at this time based on your demonstrated careless disregard for NRC requirements.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards 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.

The responses directed by this letter and the enclosed Notice 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. 150-00003
License No. ARK-740-BP-1-94

Enclosure: As Stated

cc: State of Oklahoma
State of Arkansas

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)

OTHO G. JONES)
(DBA JONES INSPECTION SERVICES))
Alderson, Oklahoma)

) Docket No. 150-00003
) License No. ARK-740-BP-1-94
) EA 94-241

ORDER SUSPENDING AUTHORITY UNDER GENERAL LICENSE
(EFFECTIVE IMMEDIATELY)

I

Jones Inspection Services is the holder of Radioactive Material License ARK-740-BP-1-94 (License) issued by the State of Arkansas, an NRC Agreement State. The License, as amended on December 22, 1994, authorizes Jones Inspection Services to possess, store and use sealed radioactive sources in various radiographic exposure devices in the State of Arkansas. Jones Inspection Services does not hold a specific NRC license. In accordance with 10 CFR 150.20, a general license is granted to Agreement State licensees to conduct the same activities in areas under NRC jurisdiction (referred to as "reciprocity") provided that the NRC is notified and the other provisions of 10 CFR 150.20 are followed.

II

On July 14, 1994, an NRC investigation was conducted to determine whether Mr. Otho G. Jones, dba Jones Inspection Services, was using regulated byproduct material in NRC jurisdiction without NRC authorization. Based on interviews with Mr. Jones, the sole proprietor of Jones Inspection Services, and on documents obtained from the Central Oklahoma Oil and Gas Company, the investigation confirmed that Jones Inspection Services had illegally used and possessed regulated byproduct material in Oklahoma, a non-Agreement State in

which the NRC maintains regulatory authority over such material. The NRC's investigation determined that Jones Inspection Services stored three radiographic exposure devices containing sealed sources of radioactive material in Oklahoma from at least January 1, 1994, to July 1994, and that these devices had been used to perform industrial radiography in Oklahoma from April 1, 1994, to June 27, 1994 for Central Oklahoma Oil and Gas Company. The investigation also determined that these activities were conducted without NRC authorization. Specifically, the investigation found that Jones Inspection Services did not hold an NRC license as required by 10 CFR 30.3 and that Jones Inspection Services did not notify the NRC, in accordance with the provisions of 10 CFR 150.20, that it planned to conduct radiography at temporary job sites in NRC jurisdiction. Thus, these activities were not subject to inspection by the NRC to assure the protection of the public health and safety.

In a signed statement Mr. Jones provided to the NRC investigator, Mr. Jones said that he did not know he had to notify the NRC and did not know to whom the information should be provided. Further, Mr. Jones indicated that he "did think to call the NRC about reciprocity, but I am afraid of the NRC and did not want more hassle [sic] so I chose not to call them about working in Oklahoma." Furthermore, Mr. Jones was the sole proprietor of Tumbleweed X-Ray Company in September 1991 when that company was issued an NRC order specifically suspending its authority to conduct radiography activities in Oklahoma and other states in which NRC maintained regulatory authority¹.

¹ Otho G. Jones' previous company, Tumbleweed X-Ray Company, was prohibited by Order from conducting licensed activities in non-Agreement States until September 6, 1994. Thus, had Mr. Jones notified the NRC of his intent to conduct radiography activities in Oklahoma in early 1994, it is likely that the NRC would have acted to prohibit those activities.

On July 21, 1994, the NRC issued a Confirmatory Action Letter (CAL 4-94-07) which described voluntary commitments made by Mr. Jones to discontinue the use of three radiographic exposure devices in his possession and to transfer the devices to authorized recipients. Mr. Jones informed NRC Region IV personnel on the same date that he had transferred two devices to an NRC licensee in the State of Oklahoma and was preparing to ship a third device on or around August 8, 1994. These commitments were replaced and superseded by the Order to Cease and Desist Use and Possession of Regulated Byproduct Material in NRC Jurisdiction dated July 26, 1994. Since that time, Mr. Jones has received Amendment 07, dated December 22, 1994, to his Arkansas License ARK-740-BP-1-94 to store radioactive byproduct material in the State of Arkansas and at temporary job sites. This does not include areas under NRC jurisdiction.

On January 31, 1995, the NRC conducted an enforcement conference with Mr. Jones to ascertain the circumstances under which Mr. Jones conducted licensed activities in NRC jurisdiction without obtaining a specific or general use license. During that conference, Mr. Jones stated, in part, that he was unaware of NRC requirements related to an Agreement State licensee's conduct of radiography in the State of Oklahoma (a non-Agreement State) and that he had made no effort to determine what the requirements were. Based on the information provided during the conference, it was determined that Mr. Jones was not knowledgeable of current NRC requirements. While Mr. Jones stated that he knew "radiation safety [requirements] to the letter," he admitted that had "no idea" if NRC requirements for radiography had changed in the last three years. Furthermore, despite the fact that Mr. Jones filed for reciprocity in Kansas and Kentucky, both of which are Agreement States, he did

not take reasonable steps to determine the reciprocity requirements for working in Oklahoma.

III

Based on the above, the NRC concludes that Mr. Otho G. Jones has demonstrated careless disregard for NRC requirements. This resulted in Mr. Jones' use of regulated byproduct material in NRC jurisdiction without first acquiring an NRC specific use license or following the reciprocity requirements of 10 CFR 30.3 and 10 CFR 150.20, respectively. This is prohibited by Section 81 of the Atomic Energy Act (AEA) of 1954, as amended, and by 10 CFR 30.3, which state that (except for persons exempt as provided in 10 CFR Parts 30 and 150) no person shall possess or use byproduct material, except as authorized in a specific or general use NRC license.

Improper handling of byproduct material can result in unnecessary exposure to radiation and, in some cases, serious injury. The Atomic Energy Act and the Commission's regulations require that the possession of licensed material be under a regulated system of licensing and inspection. Mr. Jones' actions in this case prevented the NRC from assuring, through licensing and inspection, that byproduct material is being used safely and in accordance with all NRC requirements.

Based on Mr. Jones' lack of knowledge and competence in following, and careless disregard for, NRC requirements, I lack the requisite reasonable assurance that Jones Inspection Services can conduct licensed activities in

compliance with NRC requirements and that the health and safety of the public will be protected in areas under NRC jurisdiction should Mr. Jones, Jones Inspection Services, or any successor entity engage in activities under the reciprocity provisions of 10 CFR 150.20. Therefore, the public health, safety, and interest require that the July 26, 1994 Order to Mr. Otho G. Jones, dba Jones Inspection Services, be superseded by this Order to suspend Mr. Jones', Jones Inspection Services', or any successor entity's authority granted by 10 CFR 150.20 to conduct activities in NRC jurisdiction. This Order is applicable to successor entities engaged in NRC or Agreement State licensed activities within NRC jurisdiction wherein Mr. Jones is a corporate officer or owner. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 151b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30 and 10 CFR Part 150, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT THE AUTHORITY OF MR. OTHO G. JONES, DBA JONES INSPECTION SERVICES, AND ANY SUCCESSOR ENTITY IN WHICH MR. JONES IS A CORPORATE OFFICER OR OWNER, TO CONDUCT ACTIVITIES IN AREAS UNDER NRC JURISDICTION UNDER THE GENERAL LICENSE GRANTED BY 10 CFR 150.20(a) IS SUSPENDED.

The Regional Administrator, Region IV, may, in writing, relax or rescind this Order upon demonstration by Mr. Jones for good cause. Any request by Mr. Jones for relaxation or rescission of this Order must address the following:

- A. Demonstration of Mr. Jones' understanding of applicable NRC requirements for the possession, storage and use of regulated byproduct material in NRC jurisdiction prior to filing an NRC Form 241 for performance of licensed activities in areas of NRC jurisdiction under the provisions of 10 CFR 150.20. This will require that Mr. Jones complete a formal training process and satisfactorily pass a written exam administered during the formal training process on NRC regulations applicable to the use of regulated byproduct material. Formal training shall be conducted by a consultant as described in paragraph B below or another entity approved by NRC.

- B. Retention of the services of an independent individual or organization (consultant) to perform a program and process implementation audit, to demonstrate Mr. Jones' knowledge of, and compliance with, applicable NRC requirements, prior to Mr. Jones conducting activities within NRC jurisdiction. The name and qualifications of the consultant proposed to conduct the audit shall be submitted to the Regional Administrator, NRC Region IV, for review and approval. The consultant shall be independent of Mr. Otho Jones and Jones Inspection Services and have experience in the implementation of a radiation safety program and NRC requirements.

- C. The audit required by Paragraph B shall be completed and Mr. Jones shall have the consultant submit its audit report and any recommendations for improvement to Mr. Jones and directly to the Regional Administrator, NRC Region IV prior to Mr. Jones submitting an NRC Form 241. This shall include the demonstrated resolution of any weaknesses or negative findings identified by the audit or a statement as to why the weaknesses or findings are not valid or do not need correction. The audit of Mr. Jones' performance shall include, but not be limited to:
1. A review of the administrative, operating and emergency procedures to ensure that such procedures are appropriate and meet the requirements established for working under NRC reciprocity requirements.
 2. On-site review of Mr. Jones' field activities, and interviews and observations of any selected authorized users (other than Mr. Jones) working at various locations.
- D. Mr. Jones shall provide notice to the NRC seven days prior to working in areas of NRC jurisdiction under the provisions of 10 CFR 150.20.

V

In accordance with 10 CFR 2.202, Mr. Jones must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order.

The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which Mr. Jones or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-8064, and to Mr. Jones, if the answer or hearing request is by a person other than Mr. Jones. If a person other than Mr. Jones requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).


If a hearing is requested by Mr. Jones or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Otho Jones, Jones Inspection Services, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the

presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


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

Dated at Rockville, Maryland
this 11th day of April 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

May 5, 1995

EA 95-035 and 95-063

Mattingly Testing Services, Inc.
ATTN: Mark Mattingly, President
Post Office Box 3126
Great Falls, Montana 59403

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES -
\$15,500; AND ORDER MODIFYING LICENSE (EFFECTIVE IMMEDIATELY)

Dear Mr. Mattingly:

This is in reference to NRC Inspection Report 030-20836/95-01 and NRC Investigation Case No. 94-056. The field portions of the inspection and investigation were conducted from January 4-24, 1995 in Billings and other locations in Montana. On February 28, 1995, an inspection report was issued to you describing apparent violations discovered during the inspection and the preliminary results of the investigation. On March 7, 1995, a transcribed enforcement conference with you and your vice president/assistant radiation safety officer, was conducted in the NRC's Arlington, Texas office. A list of conference participants is enclosed.

As described in detail in the inspection report and discussed during the March 7, 1995 conference, the NRC found that Mattingly Testing Services, Inc. (MTS) management and radiography personnel had violated a significant number of NRC requirements when performing radiography on a pipeline near Miles City, Montana. The NRC determined that MTS personnel had deliberately violated certain radiation safety requirements because MTS management did not believe they were necessary to assure safety. The inspection and preliminary investigation found that MTS had deliberately: (1) allowed a newly hired assistant radiographer to begin working without meeting all of the NRC's training requirements; (2) failed to supervise this assistant radiographer during radiography operations observed by the NRC inspector; (3) failed to perform a survey of the radiographic exposure device; (4) failed to complete all field audits of radiography personnel as required by NRC regulations; (5) failed to amend its NRC license to reflect a work and storage location in Billings, Montana; (6) failed to post radiation and high radiation areas; and (7) failed to ensure that the radiographic device was locked after each radiographic exposure. Other violations of NRC requirements were also identified, as noted in the enclosed Notice of Violation.

At the enforcement conference, MTS officials acknowledged that many of these violations had occurred, stated that MTS had corrected all violations and was now performing radiography "by the book," and stated that MTS did not deviate from requirements in a manner that compromised radiation safety. During the conference, NRC representatives specifically indicated to you that MTS personnel may not choose to violate requirements even if they believe that the requirements are not necessary to assure safety. Furthermore, the NRC does

not fully agree with your stated position that safety was not compromised, even though the NRC has no evidence that radiation incidents did occur as a result of these violations. To the contrary, the combination of using an inexperienced radiographer who had not been fully trained and not performing surveys in the prescribed and required manner created the potential for a serious radiation incident to occur. As discussed with you during the conference, it is unacceptable for a licensee to elect to violate requirements that are designed to assure safety. Furthermore, the NRC expects that licensee management will perform sufficient oversight through its radiation safety officers to audit the licensee's program to ensure compliance with NRC requirements and license conditions, and, when noncompliances are identified, to take immediate and lasting corrective action.

The violations are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice). Section I of the Notice addresses two violations that involve deliberately permitting an individual to act as a radiographer's assistant without completing the required radiography training and deliberately allowing the same radiographer's assistant to use a radiographic exposure device without being under the personal supervision of a radiographer. Given the deliberate nature and potential safety significance, the violations set forth in Section I of the Notice have been classified as a Severity Level II problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (Enforcement Policy).

Section II of the Notice involves ten other violations which collectively amount to a significant lack of attention to, and a breakdown in the control of, licensed activities. These violations were considered more significant in view of the deliberate nature of some of the violations. Therefore, the violations have been classified collectively as a Severity Level III problem in accordance with the Enforcement Policy.

We acknowledge your corrective actions which included: (1) completing the training of the involved assistant radiographer; (2) instructing the involved radiographer about the need for posting radiation and high radiation areas; (3) performing additional quarterly audits for the first quarter of 1995; (4) evaluating occupational radiation doses for individuals whose film badges were lost or damaged; and (5) submitting a license renewal application requesting that your Billings, Montana, facility be authorized as a storage location for your byproduct material.

Notwithstanding your corrective actions to date, in order to emphasize the significance of the deliberate violations that have occurred and the necessity of management oversight to ensure compliance with all NRC requirements associated with radiography operations, I am issuing the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the amount of \$15,500 for the Severity Level II and III problems described above and in the Notice. The escalation and mitigation factors in Section VI.B.2 of the Enforcement Policy were considered as discussed below.

With respect to the violations set forth in Section I of the Notice, the base civil penalty amount for this Severity Level II problem is \$8,000. Based on the circumstances of this case, the NRC staff is exercising discretion and is not using the escalation and mitigation factors because the civil penalty for this problem is appropriate to reflect the level of NRC concern regarding the deliberate nature of the violations and to convey the appropriate message to MTS.

As to the violations set forth in Section II of the Notice, the civil penalty amount was determined by applying the civil penalty adjustment factors in the Enforcement Policy to the \$5,000 base value for a Severity Level III problem. The base penalty was increased by 50 percent (\$2,500) because these violations were identified by the NRC during its inspection, as opposed to having been identified by MTS prior to the inspection. While the remaining adjustment factors were considered, no further adjustment to the base civil penalty for this problem was considered warranted. In particular, it should be noted that the NRC staff did not recommend any adjustment under the corrective action factor because your corrective actions focused on those noncompliances identified by the NRC and the corrective actions were not considered comprehensive to assure that MTS was complying with all NRC regulations and license conditions. In addition, no adjustment under the Licensee Performance factor was considered appropriate despite your relatively good past performance because these violations represent a substantial decline in your performance that has occurred over time.

Further, the NRC's inspection and investigative findings have undermined our confidence in MTS, and necessitate the issuance of an Order Modifying License (Effective Immediately) (Order) which requires that MTS obtain the services of an independent auditor to conduct an initial and several periodic audits of MTS' radiation safety program for two years following the initial audit. MTS is required to make arrangements for the audits as described in the enclosed Order, but may implement the audits only after the NRC has approved the selection of the auditor and the audit plan. You are advised, pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, that any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution.

In separate correspondence, Notices of Violation are being issued to you, your assistant radiation safety officer, and the involved radiographer for violation of the "Deliberate Misconduct" rule (10 CFR 30.10). The NRC staff considered issuance of orders to each individual prohibiting involvement in NRC-licensed activities, however, under the circumstances of this case, the NRC staff determined that the sanctions issued are appropriate.

MTS is required to respond to both the enclosed Notice and Order and should follow the instructions in each when preparing its response. In response to the Notice of Violation, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to the Notice, including proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement

Mattingly Testing
Services, Inc.

- 4 -

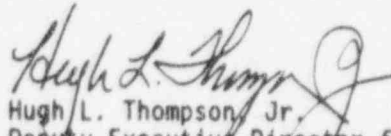
action is necessary to ensure compliance with NRC regulatory requirements.

Questions concerning this Notice or Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

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 Public Document Room (PDR). To the extent possible, your response should not include 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.

The responses directed by this letter and the enclosed Notice 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. 030-20836
License No. 25-21479-01

Enclosures:

1. Notice of Violation & Proposed Imposition of Civil Penalties - \$15,500
2. Order Modifying License (Effective Immediately)
3. Enforcement Conference Participants

cc w/Enclosures: State of Montana

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTIES

Mattingly Testing Services, Inc.
Great Falls, Montana

Docket No. 030-20836
License No. 25-21479-01
EA 95-035

During an NRC inspection and investigation conducted January 4-24, 1995, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose civil penalties pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalties are set forth below:

I. Violations Associated with Inadequate Training and Lack of Supervision

- A. 10 CFR 34.31(b) requires that the licensee not permit any individual to act as a radiographer's assistant until such individual: (1) has received copies of and instruction in the licensee's operating and emergency procedures; (2) has demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, and radiation survey instruments that the assistant will use; and (3) has demonstrated understanding of the instructions in this paragraph by successfully completing a written or oral test and field examination on the subjects covered.

Contrary to the above, on January 4, 1995, the licensee permitted an individual to act as radiographer's assistant without the above requirements being fulfilled in that the individual had not: (1) demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, and radiation survey instruments that the assistant used and (2) had not demonstrated understanding of the instructions provided to him by successfully completing a written or oral test and field examination on the subjects covered. (01012)

- B. 10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) the radiographer's personal presence at the site where the sealed sources are being used; (b) the ability of the radiographer to give immediate assistance if required; and (c) the radiographer watching the assistant's performance of the operations referred to in this section.

Contrary to the above, on January 4, 1995, a radiographer's assistant used a radiographic exposure device and was not under the personal supervision of a radiographer. Specifically, the radiographer was not watching the assistant's performance of operations including exposure of the source. (01022)

These violations represent a Severity Level II problem (Supplement VI).
Civil Penalty - \$8,000

II. Other Violations of NRC Requirements

- A. Condition 17 of License No. 25-21479-01 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the license application dated July 25, 1989.

Item 3 of the license application states that 60 Clark Street, Fort Shaw, Montana, will be used for storage of sources and devices.

Contrary to the above, from June 1994 to January 1995 the licensee did not limit storage of licensed material to 60 Clark Street, Fort Shaw, Montana, in that the licensee stored and used licensed sources and devices at 1739 North Frontage Road, Billings, Montana. (02013)

- B. 10 CFR 20.1101(c) requires that the licensee periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, between January 1994 and January 1995, the licensee failed to review its radiation protection program content and implementation. (02023)

- C. 10 CFR 20.1501 requires that each licensee shall make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation levels, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present.

Pursuant to 10 CFR 20.1003, survey means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

10 CFR 20.1201(a)(1), in part, limits the annual occupational radiation dose for an adult to a total effective dose equivalent equal to 5 rems.

Contrary to the above, as of January 24, 1995, the licensee did not evaluate the occupational radiation doses received by individuals in the September 1993, and May, June, September, and October 1994, monitoring periods, whose film badges were lost or damaged. (02033)

- D. 10 CFR 34.11(d)(1) requires, in part, that an applicant have an inspection program that includes observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed three months.

License Condition 17 incorporates the inspection program containing the requirements stated in 10 CFR 34.11(d)(1) as submitted in licensee's application dated July 25, 1989, into NRC License 25-21479-01.

Contrary to the above, the licensee did not observe the performance of several radiographers involved in radiographic operations during intervals exceeding three months. Specifically, field audits were not performed during; (1) the 4th quarter 1994 for three individuals, (2) the 3rd quarter 1994 for three individuals, (3) the 2nd quarter 1994 for five individuals, and (4) the 1st quarter 1994 for four individuals. The individuals worked continuously throughout 1994 and would have required a field audit every three months. (02043)

- E. 10 CFR 34.25(b) requires that each sealed source be tested for leakage at intervals not to exceed six months.

Condition 13 of License No. 25-21479-01 requires that, notwithstanding the periodic leak test required by Section 34.25(b) of 10 CFR Part 34, such requirement does not apply to radiography sources that are stored and not being used. The sources excepted from this test shall be tested for leakage before use or transfer to another person.

Contrary to the above, on two occasions between June 1994 and December 1994, sources excepted from leak testing in accordance with Condition 13 of NRC License 25-21479-01 were transferred to another person and were not tested for leakage prior to transfer of the sources. Specifically, sealed sources containing curie quantities of iridium-192 (Serial Numbers 10N08, 3306) had remained in storage for a period in excess of six months and were later transferred to the manufacturer for disposal without having been tested for leakage prior to the transfer. (02053)

- F. 10 CFR 34.22(a) requires, in part, that during radiographic operations the sealed source assembly shall be secured in the shielded position each time the source is returned to that position.

Contrary to the above, on January 4, 1995, a radiographer's assistant did not secure by locking the sealed source assembly after returning the source to the shielded position at the termination of a radiographic exposure. (02063)

- G. 10 CFR 34.42 requires, notwithstanding any provisions in 10 CFR 20.1903, that areas in which radiography is being performed be conspicuously posted as required by 10 CFR 20.1902(a) and (b).

10 CFR 20.1902(a) requires that each radiation area shall be posted with a conspicuous sign or signs bearing the radiation caution symbol and the words "CAUTION, RADIATION AREA."

10 CFR 20.1902(b) requires that each high radiation area shall be posted with a conspicuous sign or signs bearing the radiation caution symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

Contrary to the above, on January 4, 1995, while radiography was performed at a temporary job site located near Miles City, Montana, the licensee did not post the radiation area and the high radiation area in which industrial radiography was conducted. (02073)

- H. 10 CFR 34.43(b) requires, in part, that the licensee ensure that a survey with a calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference of the radiographic exposure device and any source guide tube.

Contrary to the above, on January 4, 1995, at a temporary job site location near Miles City, Montana, a radiographer's assistant did not perform a survey that included the entire circumference of the radiographic exposure device and the source guide tube after each radiographic exposure to determine that the sealed source had been returned to its shielded position. (02083)

- I. 10 CFR 71.56(a) requires that a licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

1. 49 CFR 172.203(d) requires, in part, that the description for a shipment of radioactive material include: (1) the name of each radionuclide, (2) the physical and chemical form of the material, (3) the activity contained in each package of the shipment in terms of curies, millicuries, or microcuries, (4) the category of label applied to each

package (e.g., RADIOACTIVE WHITE-I), and 5) the transport index assigned to each package in the shipment bearing RADIOACTIVE YELLOW-II OR -III labels.

Contrary to the above, on several occasions between November 11, 1994, and January 4, 1995, the licensee transported outside the confines of its plant a radiographic exposure device containing curie quantities of iridium-192, and the licensee did not describe the hazardous material on the shipping paper in the manner required above. (02093)

2. 49 CFR 172.702(a) requires that a hazmat employer ensure that each of its hazmat employees is trained in accordance with the requirements prescribed in 49 CFR 172.700-704.

49 CFR 172.704(c)(1)(i) requires that training for a hazmat employee employed on or before July 2, 1993, shall be completed prior to October 1, 1993. 49 CFR 172.704(c)(2) requires that the hazmat employee receive this training at least once every 2 years.

Contrary to the above, as of January 20, 1994, the licensee failed to provide the required hazmat training to hazmat employees employed prior to July 2, 1993. (02103)

These violations represent a Severity Level III problem (Supplements IV & VI). Civil Penalty - \$7,500

Pursuant to the provisions of 10 CFR 2.201, Mattingly Testing Services, Inc., is required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalties (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalties by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalties in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalties will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalties should not be imposed. In addition to protesting the civil penalties in whole or in part, such answer may request remission or mitigation of the penalties.

In requesting mitigation of the proposed penalties, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing civil penalties.

Upon failure to pay any civil penalties due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalties, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above (Reply to Notice of Violation, letter with payment of civil penalties, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Dated at Rockville, Maryland
this 5th day of May 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

MATTINGLY TESTING SERVICES, INC.
Great Falls, Montana

)
)
)
)

Docket No. 030-20836
License No. 25-21479-01
EA 95-063

ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Mattingly Testing Services, Inc., (MTS or Licensee) is the holder of Byproduct Material License No. 25-21479-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorizes the licensee to possess and utilize sealed sources of byproduct material in various radiographic exposure devices for the purpose of conducting industrial radiography. The license was due to expire on August 31, 1994, but has remained in effect based on the licensee's timely submission of a renewal application dated July 28, 1994.

II

From January 4 to January 24, 1995, an NRC inspection and NRC investigation were conducted to determine compliance with radiation safety requirements and to determine whether licensee officials and employees had deliberately violated certain NRC requirements. As described in detail in NRC Inspection Report No. ~~030-20836/95-01~~, issued on February 28, 1995, the NRC staff found that MTS radiography personnel had violated a significant number of NRC requirements when performing radiography on a pipeline near Miles City, Montana. The inspection and preliminary investigation found, in part, that some of the violations were deliberate in that the President/Radiation Safety Officer and the Vice President/Assistant Radiation Safety Officer, knew that

MTS personnel were violating NRC requirements and expressed the belief that work could be performed safely under the circumstances without meeting these requirements. The deliberate violations included, in part, not performing surveys as prescribed by 10 CFR 34.43(b), not posting radiography areas as required by 10 CFR 34.42, and not securing sealed sources in radiographic exposure devices as required by 10 CFR 34.22(a).

Further, the inspection and investigation found that MTS management deliberately allowed a newly hired assistant radiographer to begin working without meeting all of the NRC's training requirements in violation of 10 CFR 34.31(b), that an MTS radiographer had deliberately failed to supervise this assistant radiographer during radiography operations as required by 10 CFR 34.44, that MTS management had deliberately not completed all field audits of radiography personnel as required by 10 CFR 34.11(d)(1), and that MTS management had deliberately failed to amend its NRC license to reflect the establishment of a new office and storage location for NRC-licensed material in Billings, Montana as required by License Condition 17. These and other violations of NRC requirements, which were the subject of a March 7, 1995 transcribed enforcement conference at which MTS' President and Vice President admitted to the deliberate nature of the violations, are described in a Notice of Violation and Proposed Imposition of Civil Penalties - \$15,500 issued concurrently with this Order.

Based on the above, it appears that the Licensee has willfully violated NRC requirements. The NRC cannot tolerate a situation in which a licensee elects to violate requirements that are designed to assure the safety of both radiography personnel and unsuspecting members of the public. Collectively, these violations amount to a breakdown in the control of licensed activities and also demonstrate a lack of effective oversight of radiographic operations by the radiation safety officer and his assistant, all of which is made more significant by the deliberate nature of many of the violations.

Consequently, without additional actions to monitor the performance of the Licensee, I lack the requisite reasonable assurance that the Licensee's current and future operations under License No. 25-21479-01 will be conducted in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety and interest require that License No. 25-21479-01 be modified to require that MTS retain the services of an independent auditor to conduct an initial audit of MTS's radiation safety program and to conduct semiannual audits for two years following the initial audit. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations and conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. 25-21479-01 IS MODIFIED AS FOLLOWS:

- A. The Licensee shall retain the services of an independent individual or organization (consultant) to perform an initial assessment of the Licensee's radiation safety program and semiannual audits thereafter for a period of two years from the date of the initial audit such that a total of five (5) audits will be conducted.

- B. Within 30 days of the date of this Order, the Licensee shall submit to the Regional Administrator, NRC Region IV, for NRC review and approval, the name and qualifications of the consultant it proposes to use in conducting these audits and the general audit plan that complies with requirements set forth in Paragraphs IV.C, IV.D and IV.E. The consultant shall be independent of the Licensee's organization and shall be experienced, or qualified, in evaluating the effectiveness of the management and implementation of a radiation safety program for radiographic operations.

- C. Within 60 days of the date of NRC's approval of a consultant, the Licensee shall submit to the NRC Regional Administrator, Region IV, the results of the consultant's initial assessment. Thereafter, the

Licensee shall assure that the consultant performs four (4) semiannual audits to be completed approximately every six months from the completion date of the initial audit. The Licensee shall submit the results of the four semiannual audits within 30 days of the date they are provided to the Licensee in writing. With the submission of each audit report, the Licensee shall describe any corrective actions it is taking in response to audit findings or recommendations.

- D. The initial audit shall: 1) evaluate the effectiveness of the Licensee's management system for assuring compliance with all NRC requirements, including the adequacy of the Licensee's program for training radiography personnel and the adequacy of its radiography procedures; 2) evaluate the adequacy of the Licensee's corrective actions for the violations that were identified by the NRC in the Notice of Violation issued concurrently with this Order; 3) make recommendations as necessary for improvements in management oversight of licensed activities or corrective actions to comply with NRC requirements; and 4) include unannounced field audits (i.e., observe radiography operations) of at least 50 percent of Licensee personnel who are authorized at the time of the audit to be performing radiography, including personnel from both the Great Falls and Billings offices.
- E. At a minimum, each subsequent semiannual audit shall:
1. Assess the effectiveness of the Licensee's corrective actions for previous audit findings as well as any violations identified by

the NRC in subsequent inspections;

2. Assess the overall effectiveness of the Licensee's management oversight of licensed activities to assure compliance with all NRC requirements;
3. Make recommendations as necessary for improvements in management oversight or corrective actions to restore compliance with NRC requirements; and
4. Perform unannounced field audits of at least 50 percent of the radiography personnel authorized to perform radiography at the time of the audit, including some personnel from both the Great Falls and Billings offices.

The Regional Administrator, Region IV, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

v

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and

set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



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

Dated at Rockville, Maryland
this 5th day of May 1995

ENFORCEMENT CONFERENCE ATTENDANCE

LICENSEE: Mattingly Testing Services, Inc.
DATE/TIME: March 7, 1995 at 10 a.m. CST
MEETING LOCATION: NRC Region IV, Arlington, Texas
EA NUMBER: 95-035

Mattingly Testing Services, Inc.

Mark M. Mattingly, President/Radiation Safety Officer
Bart Kutt, Vice President/Assistant Radiation Safety Officer

Nuclear Regulatory Commission, Region IV

L. Joe Callan, Regional Administrator
Ross Scarano, Deputy Director, Division of Radiation Safety & Safeguards
Linda Howell, Chief, Nuclear Materials Inspection Branch
Mark Shaffer, Sr. Radiation Specialist, Nuclear Materials Inspection Branch
William Brown, Regional Counsel
Gary Sanborn, Enforcement Officer
*Beth Prange, Walnut Creek Field Office, Sr. License Reviewer

NRC Headquarters

*Nader Mamish, Office of Enforcement, Enforcement Specialist

Other

Renee Froning, Arlington Court Reporting, Inc., Court Reporter

*Denotes those who participated by telephone



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

February 13, 1995

EA 94-253

Mr. Thomas A. Caramanico, President
McCormick, Taylor and Associates, Inc.
Mellon Independence Center
701 Market Street, Suite 6000
Philadelphia, Pennsylvania 19106

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$3,000

Dear Mr. Caramanico:

McCormick, Taylor & Associates, Inc. is the holder of Byproduct Materials License No. 37-28496-01 (License) that was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on April 4, 1990. The License authorized the possession and use of cesium-137 and americium-241 in sealed sources for use in portable moisture density gauges. On August 13, 1992, an Order Revoking License (Order) was issued to McCormick, Taylor & Associates, Inc. for nonpayment of fees. You were required to comply with the Commission's requirements set forth in 10 CFR 30.36, "Expiration and termination of licenses", which are 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 indicated that you had 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 continued to possess the gauge and did not transfer it to an authorized recipient, as required within 30 days of the date of the Order. On August 29, 1994, Mr. Pasciak of the NRC Region I staff reminded your Radiation Safety Officer (RSO) that you were no longer authorized to possess or use the gauge, and were required to transfer it to an authorized recipient. A Notice of Violation (NOV) was issued to you on September 7, 1994, after a discussion by Mr. Pasciak with Mr. Moschella, your RSO. The letter and NOV were sent by certified mail, dated September 7, 1994, and were signed for by Mr. Mark Teagle on September 12, 1994.

The NOV was issued for unauthorized possession of NRC-licensed material and reminded you that by Order dated August 13, 1992, you were no longer authorized to possess or use NRC licensed material as a result of your failure to pay the Fiscal Year 1991 annual fee. The Order required you to transfer any licensed material in your possession to an authorized recipient. Since you did not respond to the NOV, the NRC again contacted you by telephone on November 9 and December 1, 1994, regarding the status of the gauge. In a return call from Mr. Moschella on December 2, 1994, the NRC was informed that you were unable to locate the gauge. As a result, a reactive inspection was conducted at your facility on December 2, 1994, during which additional violations of NRC requirements were identified. The violations are set forth in the enclosed Notice. Further, an enforcement conference was conducted with you and members of your staff on December 19, 1994, to discuss the violations. At the time of

the enforcement conference, you stated that you had simply spoken to others regarding their knowledge of the whereabouts of the gauge, but you had not conducted a search of all locations in an attempt to locate the gauge. A copy of the enforcement conference report was provided to you by separate correspondence dated December 28, 1994.

Those additional violations identified during the inspection involved: (1) your failure to maintain appropriate security and control of the gauge, as required, which resulted in its apparent loss; (2) your failure to conduct inventories of the gauge, as required; and (3) your failure to conduct the required leak tests of the gauge. The failure to maintain appropriate security of the gauge is particularly significant because it directly contributed to the gauge being lost. Further, if you had promptly transferred the gauge to an authorized recipient within 30 days of issuance of the order, as required, the loss of the gauge likely would not have occurred. The other violations were important because had the inventories or leak tests been conducted, they might have provided you an opportunity for detecting earlier that the gauge was missing.

The NRC is concerned that even though the material was not transferred to an authorized recipient, the loss of the gauge likely could have been prevented if appropriate security of the gauge was maintained. This failure to do so constitutes a significant violation of NRC requirements and is classified at Severity level III 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 importance of proper security of radioactive material at all times to ensure that the material is not lost or stolen, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 for the violation set forth in Section I of the enclosed Notice.

The base civil penalty amount for a Severity Level III violation or problem is \$500. With respect to the violation in Section I of the Notice, 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 violation was identified by the NRC; (2) 50% escalation based on the corrective action factor for your lack of prompt corrective action; (3) 100% escalation based on the prior opportunity factor since the Order provided you ample notice in Section III.B.2 of the need to control entry to restricted areas (which would have included any area where the gauge was located); and (4) 100% escalation based on the duration factor because the gauge was unattended in the vicinity of a closet for an extended period, based on the RSO's recollection. 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, and the importance of maintaining proper control of licensed material, 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 for the violations in Section I of the Notice has been increased by a total of 500%, resulting in the proposed \$3,000 civil penalty.

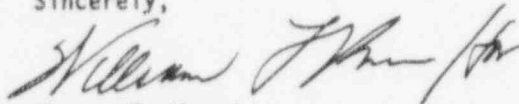
In addition, two other violations identified during the inspection are being cited and are described in Section II of the enclosed Notice.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. You should also describe what other actions you have taken in an attempt to locate and retrieve the gauge. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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 include 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.

The responses directed by this letter and the enclosed Notice 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,



Thomas T. Martin
Regional Administrator

Docket No. 030-31609
License No. 37-28496-01 (Revoked)

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

McCormick, Taylor & Associates, Inc.
Philadelphia, Pennsylvania

Docket No. 030-31609
License No. 37-28946-01 (Revoked)
EA 94-253

Based on a review of communications (and associated documents) conducted between the NRC and McCormick, Taylor & Associates, Inc. between August 13, 1992, and November 9, 1994, as well as an NRC inspection conducted on December 2, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

I. Violation Involving Inadequate Security of Licensed Material

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Section III.B.2 of an NRC Order Revoking License issued on August 13, 1992, required that McCormick, Taylor, & Associates, Inc. continue to control entry to restricted areas until they are suitable for release for unrestricted use.

Contrary to the above,

- a. for some undetermined period in 1994 (subsequent to January 1994 when the Radiation Safety Officer observed that the Troxler Model 3440 Nuclear Moisture Density Gauge was in its storage closet in the Mellon Independence Center), McCormick, Taylor, & Associates did not secure the gauge from unauthorized removal or limit access to the gauge, and did not maintain constant surveillance of the gauge. Specifically, the gauge was removed from its locked closet (restricted area) sometime in 1994 and left in the vicinity of the closet for some undetermined period without being under constant surveillance or immediate control of the licensee. This resulted in the ultimate loss of the gauge which contained 10 millicuries of cesium-137 and 50 millicuries of americium-241.

- b. prior to its removal from the closet sometime in 1994, McCormick, Taylor, & Associates did not control entry to the restricted area (locked closet where the material was stored), in that the Radiation Safety Officer informed the NRC that numerous individuals had access to the closet. This resulted in one of the individuals moving the gauge outside the closet without assuring that constant surveillance and immediate control of the gauge was maintained.

This is a Severity Level III violation (Supplement IV).
Civil Penalty - \$3,000

II. Other Violations of NRC Requirements

- A. Condition 13.A of License No. 37-28496-01 requires that sealed sources be tested for leakage and/or contamination at intervals not to exceed six months.

Contrary to the above, during the enforcement conference on December 19, 1994, McCormick, Taylor, & Associates stated that they had never performed a leak-test of the gauge, even though the gauge was in its possession for a period of time in excess of six months.

This is a Severity Level IV violation (Supplement VI).

- B. Condition 16 of License No. 37-28496-01 requires that the licensee conduct a physical inventory every six months to account for all sources and/or devices received and possessed under the license.

Contrary to the above, during the enforcement conference on December 19, 1994, McCormick, Taylor, & Associates stated that they had not performed a physical inventory of the gauge anytime after the gauge was returned to the facility after use at the Lehigh Tunnel jobsite in August 1991, a period of time in excess of six months.

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, McCormick, Taylor & Associates, Inc. is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued or other appropriate action taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, McCormick, Taylor & Associates, Inc. may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should McCormick, Taylor & Associates, Inc. fail to answer within the time specified, an order imposing the civil penalty will be issued. Should McCormick, Taylor & Associates, Inc. elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of McCormick, Taylor & Associates, Inc. is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing civil penalties.

Upon failure to pay any civil penalty due that subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2287c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

Dated at King of Prussia, Pennsylvania
this 13th day of February 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

April 26, 1995

EA 94-253

Mr. Thomas A. Caramanico, President
McCormick, Taylor and Associates, Inc.
Mellon Independence Center
701 Market Street, Suite 6000
Philadelphia, Pennsylvania 19106

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$2,000

Dear Mr. Caramanico:

This refers to your two letters, both dated March 10, 1995, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter, dated February 13, 1995. Our letter and Notice described a violation which was classified as a Severity Level III violation. A civil penalty in the amount of \$3,000 was proposed for the violation to emphasize the importance of limiting access to licensed radioactive materials and the need to secure materials from unauthorized removal, as well as the need for compliance with Commission requirements.

In your response, you admit the violations as stated in the Notice, but request mitigation of the penalty from \$3,000 to \$500 for the reasons summarized in the enclosed Appendix.

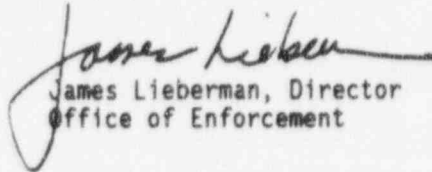
After consideration of your responses, we have concluded for the reasons given in the Appendix attached to the enclosed Order Imposing A Civil Monetary Penalty, that an adequate basis was not provided for mitigation of the civil penalty to \$500. However, the 200% escalation to emphasize the importance of maintaining a valid license has been deleted based on your assertion that you do not intend to possess any NRC licensed material in the future. Accordingly, we hereby serve the enclosed Order on McCormick, Taylor and Associates, Inc. imposing a civil monetary penalty in the amount of \$2,000. As provided in Section IV of the enclosed Order, payment should be made 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 James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

McCormick, Taylor,
and Associates, Inc.

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosures will be placed in the NRC's Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Docket No. 030-31609
License No. 37-28496-01

Enclosures: As Stated

cc w/encls:
PUBLIC
Nuclear Safety Information Center (NSIC)
Commonwealth of Pennsylvania

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
McCORMICK, TAYLOR,) Docket No. 030-31609
AND ASSOCIATES, INC.) License No. 37-28496-01 (Revoked)
Philadelphia, Pennsylvania) EA 94-253

ORDER IMPOSING A CIVIL MONETARY PENALTY

I

McCormick, Taylor and Associates, Inc. (MTA) (Licensee) was the holder of Byproduct Materials License No. 37-28496-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on October 31, 1979. The License was revoked by the Commission on August 13, 1992 for nonpayment of fees. The License authorized MTA to possess and use certain byproduct materials in accordance with the conditions specified therein at its facility in Philadelphia, Pennsylvania.

II

An inspection of MTA's activities was conducted on December 2, 1994, at MTA's facility located in Philadelphia, Pennsylvania. The results of the inspection and review of communications (and associated documents) conducted between NRC and MTA between August 13, 1992, and November 19, 1994, indicated that MTA 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 MTA by letter dated February 13, 1995. The Notice states the nature of the violations, the provisions of the NRC requirements that MTA had violated, and the amount of the civil penalty proposed for one of the violations.

MTA responded to the Notice in two letters, both dated March 10, 1995. In its responses, MTA admits the violations as stated in the Notice and requests mitigation of the penalty.

III

After consideration of MTA's responses and the statements of fact, explanation, and arguments for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated in the Notice, and that the violation set forth in Section I of the Notice was appropriately classified at a Severity Level III. The staff also has determined that an adequate basis was provided for partial mitigation of the penalty, and that a penalty of \$2,000 should be imposed.

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 2.205, IT IS HEREBY ORDERED THAT:

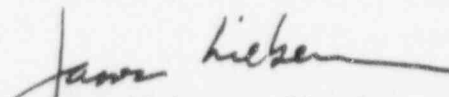
MTA pay a civil penalty in the amount of \$2,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

MTA 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, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 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 I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If MTA 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 MTA requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of Violation I, which is admitted by MTA, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 26th day of April 1995

APPENDIX

EVALUATIONS AND CONCLUSION

On February 13, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during a review of communications (and associated documents) conducted between NRC and McCormick, Taylor and Associates, Inc. (MTA) between August 13, 1992 and November 9, 1994, as well as an NRC inspection conducted at the MTA facility on December 2, 1994. MTA responded to the Notice in two letters, both dated March 10, 1995. In its responses, MTA admits the violations as stated in the Notice, but requests mitigation of the penalty. The NRC's evaluation and conclusion regarding MTA's requests are as follows:

Summary of MTA's Request for Mitigation

In its response, MTA maintains that there are a number of extenuating circumstances and other mitigating factors which should be considered and result in mitigation of the penalty.

With respect to the NRC application of 50% escalation because the violation was identified by the NRC, MTA contends that it, in fact, notified the NRC on December 2, 1994, that it could not locate the gauge. MTA states that it did not become convinced until December 1 or 2, 1994 that the gauge had been stolen or misplaced. MTA further contends that a statement made by the Radiation Safety Officer during a telephone conversation with the NRC on December 2, 1994, was, in fact, a notification that MTA was in violation.

With respect to the NRC application of 50% escalation because of the lack of prompt action, MTA states that it was not until December 2, 1994, that it became fully aware that the gauge was lost or stolen. MTA further maintains that it has acted promptly and aggressively since December in an attempt to locate the gauge.

With respect to the NRC application of 100% escalation because of prior opportunity to prevent the violation, MTA states that it did not believe it ever received the Order issued in 1992 for nonpayment of fees. At the enforcement conference, MTA indicated that it requested proof of a delivery receipt from the NRC but the NRC has not yet provided MTA with a receipt. MTA also states that its Chief Financial Officer had a conversation with an NRC representative (unnamed) in 1993, and was told that with its payment of fees and penalties at that time it was fully paid up through September 1994.

With respect to the NRC application of 100% escalation based on duration (because the gauge was unattended for an extended period), MTA states that there is no evidence to document how long the gauge was outside the locked storage closet before it was lost or stolen. MTA also states that its office is not easily accessible and is typically a secure location, noting that the fact that the gauge was out of its locked storage cabinet was not as risky a location as it might seem. Therefore, while admitting the violation, MTA maintains that these factors should reduce the escalation.

MTA also describes other bases which it considers mitigating factors and extenuating circumstances to the proposed civil penalty. Specifically, MTA

contends that there was significant confusion over payment of fees from 1991 to 1993, noting that on at least one occasion, it was cited for nonpayment of a particular charge that had in fact been paid. MTA stated that due to the confusion over payment of fees, when it was contacted in August and September of 1994, there was still confusion over payment. MTA further states that this confusion, and the fact that it never received the Order in 1992 may help explain why it did not initially respond with urgency.

MTA also states that a significant amount has already been paid in penalties for late payment of fees and that the imposition of an additional \$3,000 seems excessive. MTA maintains that it acted aggressively to locate the gauge over the ten weeks prior to its response. MTA states that the penalty is excessive to emphasize the importance of maintaining a valid license, and is unnecessary since MTA does not intend to possess a gauge of this type, or any NRC licensed material, in the future. MTA requests that the civil penalty be reduced to \$500.

NRC Evaluation of Licensee's Request for Mitigation

The NRC letter, dated February 13, 1995, transmitting the civil penalty, notes that the base civil penalty amount of \$500 in this case was increased by 50% because the violations were identified by the NRC; increased by 50% based on the licensee's lack of prompt corrective action; increased by 100% based on the prior opportunity since the Order provided ample notice of the need to control entry to restricted areas; and increased 100% based on the duration because the gauge was unattended in the vicinity of a closet for an extended period, based on the RSO's recollection. The letter also notes that to emphasize the importance of maintaining a valid license or properly disposing of NRC-licensed materials, particularly after the NRC directed and reminded MTA to do so, and the importance of maintaining proper control of licensed material, the NRC exercised discretion in accordance with Section VII.A of the Enforcement Policy and increased the base civil penalty by an additional 200 percent. As a result, a penalty of \$3,000 was proposed.

With respect to the identification factor, the NRC is not citing the licensee for failure to notify the NRC as required. It was during the NRC inspection that the specific violation was identified, namely, failure to maintain adequate security of licensed material (which resulted in the gauge being lost or stolen). Further, the loss of the gauge was only identified after the NRC repeatedly reminded MTA of the need to transfer the gauge to an authorized recipient, as well as to notify the NRC that such a transfer had taken place. Therefore, mitigation is not warranted for this factor.

With respect to the corrective actions and prior opportunity to identify factors, the NRC also notes that MTA had ample opportunity to identify and correct any problems with security of the gauge, via the repeated contacts with the NRC reminding MTA of the need to transfer the gauge to an authorized recipient. If MTA had aggressively responded to the Notice of Violation issued by the NRC on September 7, 1994, or the telephone call from Mr. Walt Pasciak on August 29, 1994, the security violation could have either been prevented, or corrected, or identified if the gauge was already missing.

MTA's failure to do so is considered particularly egregious. Even if MTA had not received a copy of the 1992 Order, it had several conversations with NRC staff regarding the status of the gauge between August 1992 and November 1994, and had received the September 7, 1994 Notice of Violation which provided prior opportunities to prevent or correct this violation. If MTA had promptly acted to locate and transfer the gauge to an authorized recipient at that time, the security violation and subsequent loss of the gauge might have been prevented. Therefore, no mitigation is warranted for these factors.

With respect to the duration factor, while MTA contends that its office is typically a secure location, and the gauge being out of its locked storage cabinet is not as risky a situation as it might seem, MTA's action to remove the gauge from its secure location without taking appropriate measures for an extended period, as the RSO recollects, provided an appropriate basis for escalating the penalty on this factor. Therefore, no mitigation of this factor is warranted.

Escalation of the penalty by 200% to emphasize the importance of maintaining a valid license is no longer warranted due to MTA's assertion that they do not intend to possess any NRC licensed material in the future. Therefore, the penalty is reduced to \$2,000.

Furthermore, notwithstanding MTA's contention, the NRC does not consider the penalty excessive, particularly given the fact that the security violation resulted in a loss or theft of radioactive material.

NRC Conclusion

The NRC has concluded that MTA did not provide an adequate basis for mitigation of the civil penalty to \$500. Given the significance of the failure to maintain security of radioactive materials, and the loss of the gauge that occurred in this case, a civil penalty in the amount of \$2,000 should be imposed.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 18, 1994

EA 94-217

Memorial Hospital
ATTN: George E. Soper, Ph.D
Senior Vice President
615 North Michigan Street
South Bend, IN 46601

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$2,500 (NRC INSPECTION REPORT NO. 030-17335/94002)

Dear Dr. Soper:

This refers to the special safety inspection conducted October 6 to October 12, 1994 at Memorial Hospital. The inspection was in response to your hospital's September 23, 1994 notification to our office of a misadministration involving a brachytherapy radiation dose. The report documenting this inspection was transmitted to you by mail with a letter dated October 26, 1994. Significant apparent violations of NRC requirements and other programmatic weaknesses in the implementation of your radiation safety program were identified during the inspection. On November 3, 1994, an enforcement conference was held in the Region III office. Attending the enforcement conference were you, Mr. Roy J. Caniano, Chief, Nuclear Materials Safety Branch, and other members of our respective staffs.

The inspection report and your letter dated October 6, 1994 described the details of the misadministration and the associated circumstances. In summary, during the planning for a gynecological treatment using cesium-137 sources on September 13, 1994, incorrect data was entered in the computerized treatment planning system. This resulted in the administration of a radiation dose 36% less than the prescribed dose. External beam radiation therapy was used to compensate for the underdose. It appears that the misadministration did not result in any significant health effects for the patient.

The violations are fully described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). Violation I involves failure to include in your Quality Management Program (QMP) written policies and procedures to ensure that final brachytherapy treatment plans were in accordance with written directives. Specifically, your QMP did not include written procedures for verifying computer-generated dose calculations from the Theraplan computer system. The failure of the QMP to meet one or more of the objectives in 10 CFR 35.32(a) is considered to be a programmatic weakness in the implementation of the QMP that resulted in a misadministration. Based on this consideration, Violation I has been categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C.

Additional QMP related violations are set forth in Section II of the Notice. These violations include: (1) failure to train supervised individuals in the QMP, and (2) failure to adequately investigate a misadministration. These violations have been categorized at Severity Level IV in accordance with the Enforcement Policy.

In addition to the violations, two programmatic issues and one concern were identified during the inspection. These pertain to: (1) lack of effective management oversight of your radiation safety program during a period when there were changes in key personnel involved with radiation safety related activities; (2) apparent inability of your staff to be self-critical when evaluating incidents, particularly when determining root causes and contributing factors; and (3) failure to provide adequate training to a newly-hired dosimetrist on your treatment planning system.

The root cause of the violations and the subsequent corrective actions were discussed during the November 3, 1994, enforcement conference. The major factors contributing to the violations appear to be the failure to include in your QMP written procedures to check computer data input and failure to effectively manage the radiation safety program during staff changes. The NRC recognizes that corrective actions have been initiated and appear acceptable. The corrective actions consisted of, but were not limited to: (1) implementing procedures to require manual independent dose calculation checks before 50 percent of a dose is delivered, and verification of accurate data entry into the treatment planning system; (2) designating a new RSO who will perform independent treatment planning quality control checks; (3) formalizing QMP training for increasing RSO supervision of personnel involved with brachytherapy; and (4) implementing proactive measures to enhance communication between the RSO and licensee management.

The NRC entrusts responsibility for radiation safety to the management of the hospital; therefore, the NRC expects effective management oversight of its licensed programs. Incumbent upon each NRC licensee is the responsibility to protect the public health and safety by assuring that all NRC requirements are met and any potential violation of NRC requirements is identified and expeditiously corrected. The development and implementation of an effective QMP is essential to establishing a system of controls to reduce the likelihood of a misadministration and to assist licensees in identifying potential weaknesses in procedures governing the administration of byproduct material or radiation from byproduct material. In view of our inspection findings and the discussions at the enforcement conference, it is fortuitous that a more serious misadministration did not occur at Memorial Hospital.

To emphasize the need for strict adherence to and strong management oversight of the quality management program required by 10 CFR 35.32, I have decided to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$2,500 for the Severity Level III problem.

The base value of a civil penalty for a Severity Level III problem is \$2,500. The civil penalty adjustment factors in the Enforcement Policy were considered. The amount of the civil penalty was escalated 50 percent because the NRC identified the violation associated with your QMP. The civil penalty

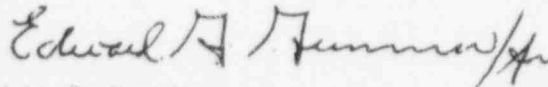
was mitigated 50 percent because of your prompt and extensive corrective actions. The remaining factors in the enforcement policy were also considered and no further adjustment to the base civil penalty is considered appropriate.

You are required to respond to this letter, and should follow the instructions specified in the enclosed Notice when preparing your response. Additionally, you should address the programmatic weaknesses and the area of concern noted above. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room. Accordingly, your response should not, to the extent possible, include any personal privacy, proprietary, or safeguards information so that it can be released to the public and placed in the NRC Public Document Room.

The response directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Public Law No. 96-511.

Sincerely,



John B. Martin
Regional Administrator

License No. 13-18881-01
Docket No. 030-17335
Enclosure:
Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/enclosure:
Bruce Vancroft, Chairman
Board of Trustees

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Memorial Hospital
South Bend, Indiana

Docket No. 030-17335
License No.13-18881-01
EA 94-217

During an NRC inspection conducted October 6, through October 12, 1994, violations of NRC requirements were identified. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

I. Violation Assessed a Civil Penalty

10 CFR 35.32(a) requires, in part, that the licensee establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user.

Pursuant to 10 CFR 35.32(a)(3), the quality management program must include written policies and procedures to meet the specific objective that final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with a written directive, which is defined in 10 CFR 35.2.

Contrary to the above, as of October 7, 1994, the licensee's quality management program did not include a written procedure to meet the objective that final plans of treatment and related calculations for brachytherapy are in accordance with a written directive. Specifically, the licensee's procedure for checking brachytherapy dose calculations was inadequate because it did not require checks of treatment planning computer data input. (01013)

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$2,500.

II. Violations Not Assessed a Civil Penalty

- A. 10 CFR 35.25(a)(1) requires, in part, that a licensee that permits the use of byproduct material under the supervision of an authorized user shall instruct the supervised individual in the licensee's written quality management program.

Contrary to the above, from July 1994 to October 5, 1994, the licensee did not instruct a dosimetrist in the licensee's original or revised written quality management program. Additionally, as of October 7, 1994, the licensee did not instruct a physicist in the licensee's revised written quality management program. (02014)

- B. 10 CFR 35.21(b)(1) requires, in part, that the licensee's radiation safety officer investigate accidents, misadministrations, and other deviations from approved safety practice and implement corrective actions as necessary.

Contrary to the above, as of October 7, 1994, the licensee's radiation safety officer did not adequately investigate a misadministration which occurred on September 15, 1994, with respect to cause and subsequent actions taken. Specifically, the licensee's radiation safety officer did not identify the inadequacy of dose calculation checks and the failure to provide QMP training. (02024)

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Memorial Hospital (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a demand for information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in

Section VI.B.2. of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351.

Dated at Lisle, Illinois
this 18 day of November 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20585-0001

April 3, 1995

EA 94-217

Memorial Hospital
ATTN: George E. Soper, Ph.D
Senior Vice President
615 North Michigan Street
South Bend, IN 46601

SUBJECT: WITHDRAWAL OF SEVERITY LEVEL III VIOLATION AND PROPOSED CIVIL
MONETARY PENALTY AND ISSUANCE OF SEVERITY LEVEL IV VIOLATION

Dear Dr. Soper:

This refers to your letter dated December 15, 1994, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated November 18, 1994. Our letter and Notice described a programmatic weakness in the implementation of the Memorial hospital quality management program (QMP). The letter identified that the QMP did not include a written procedure to meet the regulatory objective that final plans of treatment and related calculations for brachytherapy were in accordance with a written directive, and that this led to a misadministration (a 36% underdose). The Notice also described two lesser violations not assessed a civil penalty.

In your response, you denied the violation assessed a civil penalty and requested that the civil penalty be withdrawn. You also admitted to the two lesser violations. When we contacted you to discuss your response, you provided new information that had not been previously brought to the NRC's attention, even though the apparent violation had been discussed with you during the inspection exit summary in October 1994 and during the Enforcement Conference held on November 3, 1994. Therefore, we requested that you provide the additional information to us in writing regarding the procedures that were followed to meet the objective that final plans of treatment and related calculations for brachytherapy were in accordance with a written directive. You provided that additional information to us in a letter dated February 17, 1995.

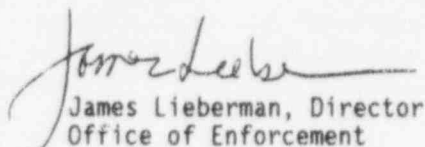
After consideration of your letters, we have concluded that the events that led up to, and contributed to, the misadministration were isolated and not programmatic occurrences. Therefore, the Severity Level III violation and the proposed civil penalty of \$2,500 are withdrawn. However, an isolated failure to check dose calculations prior to treatment completion, as required by the written quality management program, is still a violation. Therefore in accordance with the enforcement policy, the enclosed violation has been categorized at Severity Level IV as an isolated example of a QMP violation. Because you have already responded to the violation, no further response is necessary.

We are concerned that this enforcement process had to go this far before all the facts of the case were revealed. Memorial Hospital was given at least two other opportunities to make the information known (at the exit meeting of the inspection and at the enforcement conference) yet did not do so apparently because you were focusing on other aspects of the inspection. It would be helpful, in the future, to provide all relevant information to us in a timely manner to assist us in making appropriate regulatory decisions.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

We will gladly discuss any questions you have concerning this letter.

Sincerely,



James Lieberman, Director
Office of Enforcement

Enclosure: Notice of Violation

License No. 13-18881-01
Docket No. 030-17335

cc w/enclosure:
Bruce Vancroft, Chairman
Board of Trustees

NOTICE OF VIOLATION

Memorial Hospital
South Bend, Indiana

Docket No. 030-17335
License No.13-18881-01
EA 94-217

During an NRC inspection conducted October 6-12, 1994, a violation of NRC requirements was identified. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

10 CFR 35.32(a) requires, in part, that the licensee establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user.

10 CFR 35.32(a)(3), requires that the quality management program must include written policies and procedures to meet the specific objective that final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with a written directive.

Item 6 of the licensee's July 13, 1994 quality management program requires that an authorized user or qualified person under the supervision of an authorized user perform a check of all dose calculations prior to the completion of a brachytherapy treatment.

Contrary to the above, the licensee did not check the dose calculations prior to completion of a brachytherapy treatment that was completed on September 16, 1994.

This is a Severity Level IV violation (Supplement VI).



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

November 1, 1994

EA 94-180

Old Forge Testing Company
ATTN: Mr. Jonathan Szostek,
President/Radiation Safety Officer
259 S. Keyser Avenue
Old Forge, Pennsylvania 18518

Dear Mr. Szostek:

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

Old Forge Testing Company (Licensee or Old Forge) is the holder of expired Byproduct Materials License No. 37-21381-01 (license) which was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on July 7, 1983. The License authorized the possession and use of cesium-137 and americium-241 sealed source(s) in gauges. The license expired on December 31, 1993. 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) numerous telephone conversations between March 2, 1994, and June 10, 1994; (2) a Notice of Violation issued by NRC Region I on May 6, 1994, for the failure to request renewal, file a notice of non-renewal, or transfer the byproduct material prior to the expiration of the License; and (3) a June 15, 1994 letter which informed you that Old Forge 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, Old Forge 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) 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 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 (gauges containing cesium-137 and/or americium-241) 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 americium-241 and cesium-137 has been transferred, (b) a copy of the results of the leak test performed prior to the transfer, (c) a copy of the survey performed in accordance with 10 CFR 30.36(c)(1)(v), and (d) 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 Old Forge 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 Old Forge with a grace period of 30 days, that is, if Old Forge 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.

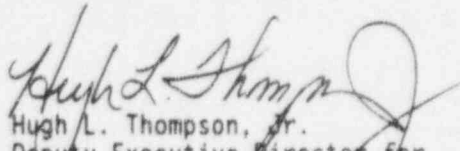
In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC's Public Document Room (PDR). To the extent possible, your response should not contain any personal privacy or proprietary information so that it can be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

Old Forge Testing Company

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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. 030-20588
License No. 37-21381-01 (Expired)

Enclosures (2): Notice of Violation and Proposed Imposition of Civil
Penalty
Order to Cease and Desist Use and Possession of Regulated
Byproduct Material

cc w/encl:
Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
Commonwealth of Pennsylvania

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Old Forge Testing Company
Old Forge, Pennsylvania 18518

Docket No. 030-20588
License No. 37-21381-01 (Expired)
EA No. 94-180

Based on a review of communications (and associated documents) conducted between the NRC and Old Forge Testing Company (Old Forge) from March 2, 1994 through June 15, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 30.3 states, in part, that except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter.

Contrary to the above, as of January 1, 1994, Old Forge has been in possession of byproduct material not authorized under a specific or general license, and Old Forge is not exempt as provided in 10 CFR Parts 30 and 150. (01013)

- B. 10 CFR 30.36(b) requires, in part, that each licensee notify the Commission promptly, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license.

10 CFR 30.36(c)(1) requires, in part, that if a licensee does not submit an application for license renewal under 10 CFR 30.37, the licensee shall, on or before the expiration date specified in the license, terminate use of byproduct material; properly dispose of byproduct material; submit a completed form NRC-314, which certifies information concerning the disposition of material; and conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey.

Contrary to the above, as of December 31, 1993, the NRC license issued to Old Forge expired and the licensee did not submit an application for license renewal nor did it notify the Commission and request termination of its license, dispose of its byproduct material, submit a completed form NRC-314, and submit a report of the results of a survey of the premises where the licensed activities were carried out. (01023)

These violations represent a Severity Level 1 problem (Supplement VI).
Civil Penalty - \$3,000.

Pursuant to the provisions of 10 CFR 2.201, Old Forge Testing Company is hereby required to submit a written statement or explanation to the Director,

Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, Old Forge may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should Old Forge fail to answer within the time specified, an order imposing the civil penalty will be issued. Should Old Forge elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of Old Forge is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

Notice of Violation

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The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

Dated at Rockville, Maryland
this ~~1st~~ day of November 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket No. 030-18999
OLD FORGE TESTING COMPANY) License No. 37-16492-02 (Expired)
Old Forge, Pennsylvania) EA 94-223

ORDER TO CEASE AND DESIST USE AND
POSSESSION OF REGULATED BYPRODUCT MATERIAL

I

Old Forge Testing Company (Licensee or Old Forge) is the holder of expired Byproduct Materials License No. 37-21381-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on July 7, 1983. The license authorized the possession and use of byproduct material, cesium-137 and americium-241 sealed source(s) in gauges, in accordance with the conditions specified therein. The License expired on December 31, 1993.

II

Since the expiration of the License, the byproduct material has remained in the possession of Old Forge at its S. Keyser Avenue facility, Old Forge, Pennsylvania. The Licensee did not submit an application for renewal of the License pursuant to 10 CFR 30.37 prior to its expiration; nor did the Licensee notify the Commission of a decision not to renew the License, dispose of the byproduct material, and submit a completed form NRC-314, as required pursuant to 10 CFR 30.36.

On May 6, 1994, the NRC Region I, issued a Notice of Violation (NOV) to Old Forge Testing Company, ATTN: Jonathan Szostek, President and Radiation Safety Officer, for possession of material without a valid license in violation of 10

CFR 30.3. The letter forwarding the NOV directed Old Forge to place the radioactive material in its possession in secure storage until such time as it acquired an NRC license, and stated that no other use of that material or purchase of additional material was authorized. Old Forge did not respond to the NOV. Old Forge was contacted on numerous occasions between March 2, 1994 and June 10, 1994, by Region I staff to determine the disposition of the byproduct material. In a March 10, 1994 telephone conversation with NRC Region I, Mr. Szostek stated that he is aware that Old Forge needs a license, but could not currently afford to apply for one. He also stated that the gauge was not being used and that it was in locked storage. On June 15, 1994, the NRC sent Old Forge a letter reminding it that it is in continuous noncompliance with NRC regulations for possessing byproduct material without a valid NRC license, and must transfer the byproduct material to an authorized recipient. By that letter, Old Forge was informed that if it was unable to transfer the material to an authorized recipient within 30 days of the date of that letter, it must inform the NRC, in writing, of the reason why it was unable to do so. As of this date, Old Forge has not responded to the letter, nor has it transferred the byproduct material to an authorized recipient. Further, as of this date, Old Forge has not applied for, nor obtained, an NRC license.

III

Old Forge is in possession of byproduct material without a valid NRC license. This is prohibited by Section 81 of the Atomic Energy Act (AEA) of 1954, as amended. Based on the above, Old Forge has violated 10 CFR 30.3, which states

that, except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general NRC license. Old Forge has failed to comply with 10 CFR 30.36(b) which requires, in part, that each licensee notify the Commission promptly, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license.

Furthermore, notwithstanding the several notices concerning the above from the NRC and the corresponding opportunities to achieve compliance with the applicable requirements, Old Forge has deliberately violated NRC requirements by possessing cesium-137 and americium-241 sealed source(s) without a license. This conclusion is based on the facts that Old Forge never filed a renewal application before the license issued to Old Forge expired on December 31, 1993, as provided in 10 CFR 30.37; Old Forge has not responded to the NRC Notice of Violation issued on May 6, 1993; Old Forge has not responded to an NRC letter dated June 15, 1994, addressing the previous failure of Old Forge to respond to the Notice of Violation; Old Forge has deliberately not disposed of the radioactive material; Old Forge possesses the radioactive material contrary to 10 CFR 30.3, without a valid NRC specific license; and Mr. Szostek has stated to the NRC on numerous occasions that Old Forge Testing Company intends to apply for a new license but has not done so.

The Atomic Energy Act and the Commission's regulations require that the possession of licensed material be under a regulated system of licensing and inspection. Improper handling of the byproduct material can result in

unnecessary exposure to radiation. Because Old Forge has continued to possess byproduct material without a valid license after being notified by NRC that the license has expired and that, since they have not obtained a new license, the material must be transferred to an authorized recipient, Old Forge has demonstrated that they are either unwilling or unable to comply with Commission requirements. Given the circumstances surrounding the possession of the byproduct material without a license by Old Forge, and its failure to respond to the NOV dated March 8, 1993, and to the letter dated June 2, 1994, I lack the requisite reasonable assurance that the health and safety of the public will be protected while Old Forge remains in possession of the radioactive material without the required NRC license.

IV

Accordingly, in accordance with Sections 81, 161b, 161c, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 20 and 30 of the Commission's regulations, IT IS HEREBY ORDERED THAT OLD FORGE TESTING COMPANY SHALL:

- A. Immediately cease and desist from any further use of byproduct material now in its possession with the exception that sealed source(s) containing cesium-137 or americium-241 shall be tested for leakage by a person authorized to perform the test prior to transfer of the source(s) to another person or entity, if a leak test has not been performed within the last six months prior to transfer.

- B. Maintain safe control over the byproduct material, as required by 10 CFR Part 20, by keeping the material in locked storage and not allowing any person access to the material, except for purposes of assuring the material's continued safe storage, until the material is transferred to a person authorized to receive and possess the material in accordance with the provisions of this Order and the Commission's regulations.
- C. Transfer all byproduct material to a person authorized to receive and possess it within 30 days of the date of this Order. If Old Forge does not have sufficient funds to complete the transfer, Old Forge must provide, within 10 days of this Order, evidence supporting such a claim by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555: (1) an estimate of the cost of the transfer and the basis for the estimate, including the license numbers and identities of the persons who have provided estimates of the cost of the transfer; (2) written statements from at least two banks stating that Old Forge does not qualify for a loan to pay for the transfer; (3) copies of the Federal income tax returns of Old Forge for the years ending 1993, 1992, 1991, and 1990; and (4) a signed statement agreeing to allow the NRC to receive credit information on Old Forge from a credit agency. In addition, if Old Forge has not been able to find a person who will accept the byproduct material, Old Forge must provide to the Director, Office of Enforcement, at the address stated above, within 10 days of the date of this Order, the names of the persons who have been contacted regarding acceptance of the

byproduct material and the dates that the contacts were made. A SUBMITTAL OF EVIDENCE SUPPORTING THE LACK OF SUFFICIENT FUNDS DOES NOT EXCUSE NONCOMPLIANCE WITH THIS ORDER.

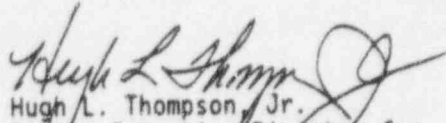
- D. At least two working days prior to the date of the transfer of the byproduct material, notify Dr. Ronald Bellamy, Chief, Nuclear Materials Safety Branch, NRC, Region I, by telephone (610-337-5200) so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.

- E. Within seven days following completion of the transfer, provide to the Regional Administrator, Region I, in writing, under oath or affirmation: (1) confirmation, on NRC Form 314, that the cesium-137 has been transferred, (2) the last date that the byproduct material was used, (3) a copy of the leak test performed prior to the transfer, (4) a copy of the survey performed in accordance with 10 CFR 30.36(c)(1)(v), and (5) a copy of the certification from the authorized recipient that the source has been received.

Copies of the response to this Order shall be sent to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Assistant General Counsel for Hearings and Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with NRC requirements.

FOR THE NUCLEAR REGULATORY COMMISSION



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

Dated at Rockville, Maryland
this ¹⁴ day of November 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 30, 1995

EA 94-180

Old Forge Testing Company
ATTN: Mr. Jonathan Szostek,
President
259 S. Keyser Avenue
Old Forge, Pennsylvania 18518

Dear Mr. Szostek:

SUBJECT: WITHDRAWAL OF CIVIL PENALTY

Enclosed is Amendment No. 2, terminating Byproduct Material License No. 37-21381-01 (Expired). The license is being terminated because Old Forge Testing Company (Old Forge) has transferred all licensed material to an authorized recipient after the NRC, on November 1, 1994, issued an Order to Cease and Desist Use and Possession of Regulated Byproduct Material (Order) and a Notice of Violation and Proposed Imposition of Civil Penalty - \$3,000 (Notice). As further described therein, these enforcement actions were issued because Old Forge failed to apply for renewal of the license, file a notice of non-renewal, or divest itself of the licensed material; and because Old Forge failed to respond to a prior Notice of Violation, as well as a subsequent follow-up letter, regarding these matters.

After careful consideration and consultation with the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, the NRC is withdrawing the \$3,000 civil penalty that was proposed on November 1, 1994. The withdrawal of the civil penalty is based in part on: (1) consideration of your ability to pay, as documented in your letter dated March 3, 1995, and as permitted in Section VI.B(1) of the "General Statement of Policy and Procedure for Enforcement Actions," (Enforcement Policy); and (2) exercise of enforcement discretion as permitted in Section VII.B(6) of the Enforcement Policy. Discretion is being exercised because you transferred the licensed material as directed in the Order, and also in consideration of the fact that, after the violations occurred in this case, changes were made to the requirements of 10 CFR 30.36, "Expiration and termination of licenses. . ." (59 FR 36026).

Should you desire to pursue your application for a new NRC license, you should be aware that NRC will expect you to conduct your licensed program in accordance with NRC requirements, and that further failure to do so may result in more significant enforcement action, including prompt suspension or revocation of your license. You also will be required to resolve all outstanding fees issues as further discussed in the April 19, 1995 letter to Old Forge from Diane Dandois, Chief, License Fee & Debt Collection Branch, Office of the Controlier. Additionally, you will be required to address, as part of the license application process:

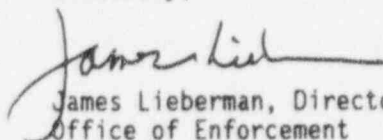
Mr. Jonathan Szostek

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1. Why NRC should have confidence that you have sufficient monetary resources to conduct licensed activities safely, including the performance of required leak testing, and pay all required NRC fees, and
2. Why NRC should have confidence that, in the future, you will comply with NRC requirements and promptly respond to NRC notices and inquiries.

In accordance with 10 CFR 2.790 of the "NRC's Rules of Practice", a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosure: Amendment to
License No. 37-21381-01 (Expired)

Docket No. 030-20588
License No. 37-21381-01 (Expired)
EA 94-180

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License number 37-21381-01

Docket or Reference number 030-20588

Amendment No. 02

Old Forge Testing Company
259 S. Keyser Avenue
Old Forge, Pennsylvania 18518

In accordance with letter dated March 3, 1995, License Number 37-21381-01 is hereby terminated.



Date

JUN 29 1995

For the U.S. Nuclear Regulatory Commission

By

Robert J. Pasich
Nuclear Materials Safety Branch
Region I
King of Prussia, Pennsylvania 19406



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

December 14, 1994

EA 94-248

Mr. Louis Paolino, President
Joseph Paolino and Sons, Inc.
1000 Crawford Place
Mt. Laurel, New Jersey 08054

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,000; NOTIFICATION OF CONSIDERATION OF THE IMPOSITION OF DAILY
CIVIL PENALTIES

Dear Mr. Paolino:

Joseph Paolino and Sons, Inc. is the holder of revoked Byproduct Materials License No. 37-20746-01 (license) that was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on September 20, 1984. The License authorized the possession and use of cesium-137 and americium-241 in sealed sources for use in portable moisture density gauges. Licensees of the Commission are required to pay annual fees. You have failed to pay annual fees for Fiscal Year 1992. On July 30, 1993, an Order Revoking License was issued to Joseph Paolino and Sons, Inc. for nonpayment of fees. The Licensee was required to comply with the Commission's requirements set forth in 10 CFR 30.36, "Expiration and Termination of Licenses". 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, (1) attempts were made by NRC staff to reach your establishment by telephone on October 5, 1994, November 9, 1994, and November 18, 1994; however, the NRC was only able to verify an address; (2) messages were left on your voice mail, the last message being left on November 18, 1994, and you have not responded back to the NRC; (3) a letter was sent to you by certified mail, dated August 18, 1994, which forwarded an NRC Notice of Violation and Revoked License which was returned to the NRC as unclaimed; and (4) a second letter, which resent the NRC Notice of Violation and Revoked License, was delivered subsequently by Federal Express and was signed for by T. Paolino at 9:21 a.m. on October 6, 1994. That Notice of Violation and Revoked License advised you, that by Order dated July 30, 1993, you were no longer authorized to possess or use NRC licensed material as a result of your failure to pay the Fiscal Year 1992 annual fee. You were directed to transfer any licensed material that was in your possession to an authorized recipient. As of this date, Joseph Paolino and Sons, Inc. has not responded to the letter, has not informed the NRC that it has transferred the byproduct material to an authorized recipient, and has not applied for nor obtained an NRC license.

Mr. Louis Paolino

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), involve: (a) possession of byproduct material without a license, contrary to 10 CFR 30.3; and (b) failure to adhere to conditions of the Order Revoking License requiring transfer of the material to an authorized recipient, and notification of the NRC of the transfer.

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 without a license, your noncompliance with the July 30, 1993 Order, 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 Severity Level III problem 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 Section VI.B.2 of 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.

Further, given the regulatory significance of this case, if Joseph Paolino and Sons, Inc. does not transfer or promptly dispose of the material, 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 Paolino and Sons, Inc. with a grace

Mr. Louis Paolino

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period of 30 days, that is, if Paolino and Sons, Inc. 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 the Order Revoking License. You also are required to respond to this Notice explaining how you will comply with that Order. Your response will be reviewed to determine whether further enforcement action will be taken against you pursuant to 10 CFR 30.10, "Deliberate misconduct". Your continued failure to comply with the Order may also result in additional civil and/or criminal sanctions.

If you have any questions concerning this Notice, please contact 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, proprietary, or safeguards 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.

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,



Thomas T. Martin
Regional Administrator

Docket No. 030-22026
License No. 37-20746-01 (Revoked)

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Joseph Paolino and Sons, Inc.
Mt. Laurel, New Jersey

Docket No. 030-22026
License No. 37-20746-01 (Revoked)
EA 94-248

Based on a review of communications (and associated documents) conducted between the NRC and Joseph Paolino and Sons, Inc. between July 30, 1993 and November 18, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 30.3 states, in part, that except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter.

Contrary to the above, from August 18, 1994 until the date of this Notice, Joseph Paolino and Sons, Inc. has continued to possess byproduct material (namely americium-241 and cesium-137) not authorized under a specific or general license, and Joseph Paolino and Sons, Inc. is not exempt as provided in 10 CFR Parts 30 and 150 since License No. 37-20746-01 was revoked as of August 30, 1993, via an Order Revoking License issued on July 30, 1993. (01013)

- B. Section III.C of an NRC Order Revoking License issued on July 30, 1993, required that Joseph Paolino and Sons, Inc. dispose of any licensed material acquired or possessed under the authority of License No. 37-20746-01 within thirty (30) days after the effective date of the Order, either by returning the material to the manufacturer or transferring it to another person licensed to possess the same material.

Section III.D of the NRC Order Revoking License issued on July 30, 1993, required that Joseph Paolino and Sons, Inc. within five days after disposal of the material, notify, in writing, the Regional Administrator for NRC Region I, of the disposition of any licensed material which may have been possessed on the date of the Order under authority of License No. 37-20746-01.

Section III.E of the NRC Order Revoking License issued on July 30, 1993, required that Joseph Paolino and Sons, Inc., within thirty (30) days of the effective date of the Order, conduct a radiation survey of the premises where the licensed activities were carried out, as set forth in 10 CFR 30.36(c)(1)(v) as applicable, and submit a report of the results of this survey to the Regional Administrator for NRC Region I.

Contrary to the above, as of December 1, 1994, Joseph Paolino and Sons, Inc. had not informed the NRC that the material possessed under Revoked License 37-20746-01 had been properly disposed, nor did Joseph Paolino and Sons, Inc. submit a report of the results of a survey to the Regional Administrator, and the NRC is not otherwise aware that the material had been transferred to an authorized recipient or returned to the manufacturer, or that the required survey was conducted. (01023)

These violations represent a Severity Level III problem (Supplement VI).
Civil Penalty - \$3,000.

Pursuant to the provisions of 10 CFR 2.201, Joseph Paolino and Sons, Inc. is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued or other appropriate action taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, Joseph Paolino and Sons, Inc. may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should Joseph Paolino and Sons, Inc. fail to answer within the time specified, an order imposing the civil penalty will be issued. Should Joseph Paolino and Sons, Inc. elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the

civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of Joseph Paolino and Sons, Inc. is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due that subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

Dated at King of Prussia, Pennsylvania
this 14th Day of December 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

March 8, 1995

EA 95-034

Mr. Louis Paolino, President
Joseph Paolino and Sons, Inc.
1000 Crawford Place
Mt. Laurel, New Jersey 08054

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF DAILY CIVIL
PENALTIES - \$15,000

Dear Mr. Paolino:

On December 14, 1994, the NRC issued to you a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) in the amount of \$3,000. The NOV cited you for: (a) possession of byproduct material without a license; and (b) failure to transfer the byproduct material to an authorized recipient, to notify the NRC of the disposition of byproduct material, and to perform radiation surveys of the premises where NRC-licensed activities were conducted. In addition, the NOV indicated that unless you transferred the byproduct material to an authorized recipient within 30 days of the date of the NOV, the violation involving unauthorized possession of byproduct material without an NRC license would be assessed a daily civil penalty of \$500 per day beginning on the day after the date of the NOV.

To date, Joseph Paolino and Sons, Inc. has failed to respond to the December 14, 1994, NOV even though a response was due by January 13, 1995, and even though Mr. Tom Bassett, your controller, was contacted on January 19, January 20, and February 1, 1995, regarding a response. In addition, you are still in continuing violation of NRC requirements in that you possess byproduct material without an NRC license and have not transferred the material to an authorized recipient. Therefore, the attached Notice of Violation and Proposed Imposition of Daily Civil Penalties - \$15,000 (Notice) is being issued. Joseph Paolino and Sons, Inc. is hereby put on notice that, for each additional 30 days that it continues to possess byproduct material in violation of NRC requirements, an additional Notice of Violation will be issued proposing imposition of daily civil penalties in the amount of \$500 per day pursuant to Section 234 of the Atomic Energy Act, as amended.

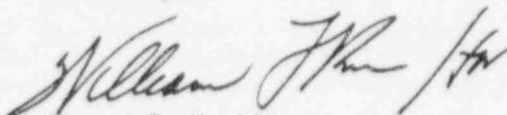
You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response.

If you have any questions concerning this action, please contact Ms. Patricia Santiago, Assistant Director for Materials, Office of Enforcement, at (301) 504-3055.

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.

The responses directed by this letter and the enclosed Notice 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,



Thomas T. Martin
Regional Administrator

Docket No. 030-22026
License No. 37-20746-01 (Revoked)

Enclosure: Notice of Violation and Proposed Imposition of Daily Civil Penalties - \$15,000

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF DAILY CIVIL PENALTIES

Joseph Paolino and Sons, Inc.) Docket No. 030-22026
Mt. Laurel, New Jersey) License No. 37-20746-01 (Revoked)
) EA 95-034

Based upon notice provided to Joseph Paolino and Sons, Inc. (Licensee) in the Nuclear Regulatory Commission's (NRC) letter dated December 14, 1994, and a review of communications between the NRC and the Licensee between December 15, 1994, and January 14, 1995, a continuing violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose daily civil penalties pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalties are set forth below:

10 CFR 30.3 states, in part, that except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter.

Section 234 of the Atomic Energy Act of 1954, as amended, states, in part, that any person who violates any licensing provision of Section 81, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation, of any license issued thereunder, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed \$100,000 for each violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

Contrary to the above, from December 15, 1994, until January 14, 1995, Joseph Paolino and Sons, Inc. continued to possess byproduct material without an NRC license. Specifically, Joseph Paolino and Sons, Inc. possessed americium-241 and cesium-137, not authorized under a specific or general license, and Joseph Paolino and Sons, Inc. is not exempt as provided in 10 CFR Parts 30 and 150. (01013)

This is a Severity Level III violation (Supplement VI).
Civil Penalties - \$15,000.

Pursuant to the provisions of 10 CFR 2.201, Joseph Paolino and Sons, Inc. is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued or other appropriate action taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, Joseph Paolino and Sons, Inc. may pay the civil penalties by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalties proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalties in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should Joseph Paolino and Sons, Inc. fail to answer within the time specified, an Order imposing the civil penalties will be issued. Should Joseph Paolino and Sons, Inc. elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalties should not be imposed. In addition to protesting the civil penalties in whole or in part, such answer may request remission or mitigation of the penalties.

In requesting mitigation of the proposed penalties, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of Joseph Paolino and Sons, Inc. is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing civil penalties.

Upon failure to pay any civil penalties due that subsequently have been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalties, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalties, and Answer to a Notice of Violation) should be addressed to: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

Dated at King of Prussia, Pennsylvania
this 8th day of March 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

May 9, 1995

EA 95-090

Joseph Paolino and Sons, Inc.
ATTN: Louis Paolino, President
1000 Crawford Place
Mt. Laurel, New Jersey 08054

SUBJECT: CONFIRMATORY ORDER

Dear Mr. Paolino:

This refers to the NRC's letter of April 13, 1995 regarding settlement of the unpaid civil penalties in the amount of \$3000 proposed on December 14, 1994 and \$15,000 proposed on March 8, 1995 and the option of a settlement as stated in the April 13, 1995 letter. Under the terms of that letter, which Mr. Matthew Paolino, Assistant Secretary of Joseph Paolino and Sons, Inc., (Licensee) signed on behalf of the corporation, it was agreed that the terms expressed in that letter would be ordered by Confirmatory Order.

Under the terms of the agreement and Confirmatory Order, the NRC withdraws the proposed civil penalties, and the Licensee and its successors agree not to be involved in NRC-licensed activities in NRC jurisdiction for five years, and the matter will be considered settled. However, should you violate any of the terms of this agreement as ordered by the Confirmatory Order, you may be subject to further enforcement action, and the unpaid civil penalty amount would be due in full.

Enclosed is the Confirmatory Order implementing the agreement described above. No response to this Order is required. If you have any questions, please contact me at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and any response will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in black ink, appearing to read "James Lieberman".

James Lieberman, Director
Office of Enforcement

Docket No. 030-22026
License No. 37-20746-01 (Revoked)

Enclosure: As Stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
JOSEPH PAOLINO AND SONS, INC.) Docket No. 030-22026
Mt. Laurel, New Jersey) License No. 37-20746-01(Revoked)
) EA 95-090

CONFIRMATORY ORDER

I

Joseph Paolino and Sons, Inc. (Licensee) previously held Byproduct Material License No. 37-20746-01 issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 30. The license authorized the possession and use of sealed sources containing byproduct material (cesium-137 and americium-241) in portable moisture density gauges, in accordance with the conditions specified therein. The license was issued on September 20, 1984 and was revoked by an Order Revoking License for nonpayment of fees on July 30, 1993.

II

The Order Revoking License directed the Licensee to transfer all licensed material that was in its possession to an authorized recipient. The Licensee failed to transfer the material and on August 18, 1994, the NRC issued a Notice of Violation and Revoked License, which was returned unclaimed and resent by messenger service and signed for by the Licensee on October 6, 1994. On December 14, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$3000 and Notification of Consideration of the Imposition of Daily Civil Penalties for unauthorized possession of byproduct material and failure to comply with the Order Revoking License. The Licensee failed to respond to this action and on March 8, 1995, the NRC issued a Notice of Violation and Proposed Imposition of Daily Civil Penalties - \$15,000. The

Licensee responded and transferred the byproduct material in its possession to an authorized recipient on March 24, 1995. The Licensee did not pay the outstanding civil penalties totaling \$18,000.

III

The Notices of Violation and Proposed Imposition of Civil Penalties dated December 14, 1994 and March 8, 1995 are still outstanding. As the parties desire to resolve all matters pending between them, the Licensee, through its Assistant Secretary, Matthew Paolino, has entered into an agreement with the NRC executed on April 18, 1995. Under the terms of the agreement, the NRC withdraws the civil penalty in the amount of \$3,000 proposed by Notice of Violation dated December 14, 1994 and the daily civil penalties in the total amount of \$15,000 proposed by Notice of Violation dated March 8, 1995. Under the terms of the agreement, Joseph Paolino and Sons, Inc., Licensee, agrees that for a period of five years from April 18, 1995, (1) neither the Licensee, nor any successor entity, shall apply to the NRC for a license; and (2) neither Joseph Paolino and Sons, Inc. nor a successor entity, shall engage in NRC-licensed activities within the jurisdiction of the NRC for that same period of time.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.205, and 10 CFR Parts 30, 34, and 150, IT IS HEREBY ORDERED THAT:

1. The NRC withdraws the civil penalty in the amount of \$3000 proposed by Notice of Violation dated December 14, 1994 and the civil penalties in the amount of \$15,000 proposed by Notice of Violation dated March 8, 1995.

2. For a period of five years from April 18, 1995:
 - (a) neither Joseph Paolino and Sons, Inc., nor any successor entity shall apply to the NRC for a license; and
 - (b) neither Joseph Paolino and Sons, Inc., nor any successor entity, shall engage in NRC-licensed activities (including exercising any control over NRC-licensed activities) within the jurisdiction of the NRC for that same period of time.

3. If Joseph Paolino and Sons, Inc., or a successor entity, violates paragraph 2. of this section of the Confirmatory Order, then the remaining unpaid civil penalty amount shall be due and payable by Joseph Paolino and Sons, Inc. or a successor entity, immediately and without further notice.

V

Any person adversely affected by this Confirmatory Order, other than Joseph Paolino and Sons, Inc. or a successor entity, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and

Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

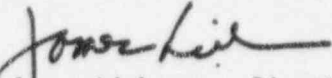
If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

VI

On March 24, 1995, the Licensee transferred the byproduct material to Glasgow, Inc., an authorized recipient and the NRC, Region I, has confirmed that transfer. Accordingly, given the Licensee's failure to pay the annual fee for

the License, the Licensee's transfer of the byproduct material, and the Licensee's agreement as described in Section III above, License No. 37-20746-01 is hereby terminated.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 9th day of May 1995

B. NOTICE OF VIOLATIONS, NO CIVIL PENALTY



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4361

June 23, 1995

EA 95-104

Mr. Jack Braun, President
Braun Intertec Corporation
6801 Washington Avenue South
P.O. Box 39108
Minneapolis, MN 55439-0108

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT NO. 030-11193/95001(DRSS))

Dear Mr. Braun:

This refers to the special safety inspection conducted on January 19, 1995, and an investigation conducted by the NRC Office of Investigations (OI Report No. 3-95-003), to review the circumstances surrounding the damaged moisture density gauge incident which occurred on January 9, 1995. During this inspection and investigation a violation of NRC requirements was identified, and on June 20, 1995, an enforcement conference was conducted by telephone. The report documenting the inspection was sent to you by letter dated June 14, 1995. You reported the incident to NRC Region III by telephone on January 10, 1995, and you submitted a written report by letter dated January 13, 1995.

On January 9, 1995, one of your authorized users, working at the Mile Health Care Center in Minneapolis, left a moisture/density gauge between two excavations and walked approximately 80 feet away to a portable toilet. The gauge was left unattended for approximately 10 minutes. During that time, the gauge was hit by a bulldozer. Damage to the gauge was limited to the outer casing, internal electronics, and a slightly bent source rod; however, the sources remained intact. The authorized user was aware of the NRC requirements for not leaving a gauge unattended.

One violation is described in the enclosed Notice of Violation (Notice) involving failure to control and maintain constant surveillance of licensed material in an unrestricted area. The root cause of the violation appears to be isolated poor judgement on the part of the authorized user.

The violation is of concern because it represents a significant failure to control licensed material. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, the violation has been categorized at Severity Level III.

We acknowledge your immediate corrective actions. Once the authorized user was informed that the gauge had been run over, he immediately secured the area and notified the Radiation Safety Officer (RSO). The RSO immediately drove to the site, assessed the damage, and surveyed the area and gauge. He then

returned the gauge to your storage facility and performed a leak test which indicated no removable contamination.

We also acknowledge your long-term corrective actions. The authorized user received remedial training and a letter of reprimand, and was placed on permanent probation. A letter was sent to all of the field RSOs at the branch locations informing them of the incident. The field RSOs held safety meetings with the authorized users to discuss on-site safety and emergency procedures and will conduct and document on-site field audits. You have formalized a corporate policy for this type of incident involving a 3-day suspension of the authorized user for the first occurrence and termination for the second occurrence. Finally, a corporate health and safety manual was distributed on April 21, 1995, which requires monthly safety meetings for all of your staff.

In accordance with the Enforcement Policy a civil penalty is considered for a Severity Level III violation in order to emphasize the need to strictly control licensed material to ensure public health and safety. However, after considering the civil penalty adjustment factors set forth in Section VI.B.2 of the NRC's Enforcement Policy, I have decided not to propose a civil penalty in this case. Although NRC Information Notice 93-18 dated March 10, 1993, provided your authorized users prior notice of their responsibility to control and maintain constant surveillance of moisture density gauges during field operations, full mitigation of this penalty was warranted for your identification of the violation, good corrective actions, and good past performance.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards 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.

The responses directed by this letter and the enclosed Notice 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,



John B. Martin
Regional Administrator

Docket No. 030-11193
License No. 22-16537-01

Enclosure:
Notice of Violation

NOTICE OF VIOLATION

Braun Intertec Corporation
Minneapolis, Minnesota

Docket No. 030-11193
License No. 22-16537-01
EA 95-104

During an NRC inspection conducted on January 19, 1995, and an investigation conducted by the NRC Office of Investigations, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on January 9, 1995, the licensee did not control and maintain constant surveillance of licensed material consisting of approximately 8 millicuries of cesium-137 and 40 millicuries of americium-241 contained in a moisture density gauge located at Nile Health Care Center (a temporary job site and unrestricted area) in Minneapolis, Minnesota. Specifically, an authorized user left the gauge unattended and the gauge was subsequently hit and damaged by a bulldozer.

This is a Severity Level III violation (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Braun Intertec Corporation is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region III, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Lisle, Illinois
this 23rd day of June 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

June 27, 1995

EA 95-112

Geo-Test, Ltd.
AKA: RC Associates, Inc.
ATTN: Mr. Richard H. Crannell
Chief Executive Officer
5859 Sherman Road
Saginaw, Michigan 48604

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT NO. 030-30376/95001)

Dear Mr. Crannell:

This refers to the special safety inspection conducted from May 25 to May 30, 1995, to review activities authorized by NRC Byproduct Material License No. 21-25870-01. The report documenting the inspection was mailed to you by letter dated June 12, 1995. A significant violation of NRC requirements was identified during the inspection, and on June 15, 1995, a transcribed enforcement conference was held by telephone. Participating in the enforcement conference were you, Mr. James Caldwell, Deputy Director, Division of Radiation Safety and Safeguards, and other members of our respective staffs.

On May 9, 1995, a Geo-Test, Ltd., inspector returned to your facility with a Troxler soil moisture/density gauge, containing NRC licensed materials (nominally 10 millicuries of cesium-137 and 40 millicuries of americium-241 in sealed sources) in the open bed of a pick-up truck. The inspector unlocked the restraining chain for the gauge and entered your offices, leaving the gauge unattended in the open truck in an unrestricted area. The inspector returned approximately 15 minutes later and found that the Troxler gauge was missing. On May 10, 1995, you notified the NRC, local and state authorities, and subsequently the media, that licensed material was missing.

The violation is fully described in the enclosed Notice of Violation (Notice) and represents a significant failure to control licensed material. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, the violation is categorized at Severity Level III.

The root cause of the violation and the subsequent corrective actions were discussed during the June 15, 1995, enforcement conference. The root cause was attributed to inattention by the gauge user and a failure by management to emphasize the need to secure licensed material. Corrective actions consisted of reviewing the event with other gauge users, discussing the need to secure licensed material at monthly safety meetings, and a plan to reemphasize the need to secure licensed material at the beginning of each construction season. Other corrective actions were to encourage gauge users to participate in self and peer audits and to institute a program of unannounced field compliance checks by supervisors.

As the holder of a Byproduct Material License, the NRC entrusts responsibility for radiation safety to the management of Geo-Test, Ltd.; therefore, the NRC expects effective management and oversight of its licensed programs. Incumbent upon each NRC licensee is the responsibility to protect the public health and safety by assuring that all requirements of the NRC license are met and access to licensed material is controlled so that materials do not inadvertently enter the public domain.

To emphasize the need for strict control of NRC-licensed materials, I have decided to issue the enclosed Notice of Violation. A civil monetary penalty usually accompanies a Severity Level III violation. The civil penalty adjustment factors in the NRC Enforcement Policy were considered and, on balance, the civil penalty was fully mitigated. The civil penalty was initially mitigated 25 percent for the self-disclosing nature of the violation and for your efforts to identify the root cause of the violation. The civil penalty was mitigated another 50 percent for the above described corrective actions. The civil penalty was mitigated an additional 100 percent for the good past performance of Geo-Test, Ltd. The remaining factors in the enforcement policy were also considered and no further adjustment to the base civil penalty is considered appropriate.

An additional violation was identified during the inspection. This violation concerned your failure to obtain a license amendment from the NRC prior to changing your name to RC Associates, Inc., and moving your facility from 2970 Bay Road to 5859 Sherman Road, in Saginaw, Michigan. The NRC inspected the storage facility at 5859 Sherman Road and found it met NRC requirements. A license amendment, dated June 14, 1995, requesting a change of name and transfer of location was telefaxed to the Region III office on that date. The violation for failure to amend your NRC license prior to changing the name and relocating the facility is categorized at Severity Level IV and a civil penalty is not proposed.

You are required to document your response to this letter and the enclosed Notice and should follow the instructions specified in the enclosed Notice when preparing your response. In addition to your specific response to the violations, please also address the actions you have implemented or plan to take to ensure timely and lasting improvement in your radiation safety program. You should also address your management of the licensed materials program and any improvements to procedures and practices needed to achieve and maintain compliance with NRC requirements and license conditions.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, the enclosed Notice and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not contain any personal privacy, proprietary, or safeguards 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.

Geo-Test, Ltd.

- 3 -

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Public Law No. 96-511.

Sincerely,


John B. Martin
Regional Administrator

Docket No. 030-30376
License No. 21-25870-01

Enclosure: Notice of Violation

NOTICE OF VIOLATION

Geo-Test, Ltd.
AKA: RC Associates, Inc.
Saginaw, Michigan

Docket No. 030-30376
License No. 21-25870-01
EA No. 95-112

During an NRC inspection conducted from May 25 to May 30, 1995, violations of NRC requirements were identified. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violations are listed below:

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on May 9, 1995, the licensee did not secure from unauthorized removal or limit access to a Troxler soil moisture/density gauge containing licensed materials (nominally 10 millicuries of cesium-137 and 40 millicuries of americium-241 in sealed sources) located in the open bed of a pick-up truck, an unrestricted area, nor did the licensee control and maintain constant surveillance of these licensed materials. (01013)

This is a Severity Level III violation (Supplement IV).

- B. Condition Nos. 1 and 2 of NRC Byproduct Material License No. 21-25870-01 indicate that the name of the licensee is Geo-Test, Ltd., and is located at 2970 Bay Road, Saginaw, Michigan. Condition No. 10 of the license requires that licensed materials be stored at 2970 Bay Road, Saginaw, Michigan.

Contrary to the above, as of April 25, 1995, the licensee was no longer known as Geo-Test, Ltd., was no longer located at 2970 Bay Road, Saginaw, Michigan, and was no longer storing licensed materials at that address. Specifically, the licensee changed its name to RC Associates, Inc., changed its operating location to 5859 Sherman Road, Saginaw, Michigan, and stored licensed materials, Troxler soil moisture/density gauges containing nominally 10 millicuries of cesium-137 and 40 millicuries of americium-241 in sealed sources, at 5859 Sherman Road, Saginaw, Michigan. (02014)

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Geo-Test, Ltd. (also known as RC Associates, Inc.) (Licensee) is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of

Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a demand for information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Lisle, Illinois
the 27 day of June 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

June 6, 1995

IA 95-018

Robert F. Hall, M.D.
HOME ADDRESS DELETED
UNDER 2.790

SUBJECT: NOTICE OF VIOLATION
(Enforcement Conference, NRC Inspection Report 030-03018/94-001, and
Office of Investigations (OI) Report 1-94-005R)

Dear Dr. Hall:

On April 25, 1995, the NRC conducted an enforcement conference with Carlisle Hospital and three employees, including yourself, in the Region I office in King of Prussia, Pennsylvania, to discuss the circumstances associated with the performance of teletherapy activities between December 1992 and April 1993 by two individuals who were not authorized, at the time, to perform such activities. Although the hospital had requested that the names of the two individuals be added to the license as authorized users, the individuals performed teletherapy between December 1992 and April 1993 (when the NRC approved the individuals as authorized users), without being listed on the license as authorized users and without being provided any supervision by an authorized user. The OI report concluded that you deliberately permitted unauthorized physicians to perform the radiation teletherapy in violation of the license. A copy of the OI synopsis of the investigation was forwarded to the hospital on March 23, 1995.

At the enforcement conference, you admitted that you knew that the two individuals were not listed on the license, were performing teletherapy activities, and were not under the supervision of an authorized user. As the Chairman of the Radioisotope Committee (RIC), you had an obligation to ensure compliance with NRC requirements; however you allowed this violation to continue, thereby deliberately causing Carlisle Hospital to be in violation of the terms of its license. As a result, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,000 (Enclosure 1) has been issued to Carlisle Hospital. Additionally, your actions constitute a violation of the requirements set forth in 10 CFR 30.10. Given that you were the Chairman of the RIC, the violation is classified at Severity Level III.

As the Chairman of the RIC, you were in a position that conferred upon you trust and confidence that you would ensure that licensed activities at the hospital were conducted safely and in accordance with NRC requirements. Your actions between December 1992 and April 1993, did not adhere to these standards, and did not provide an appropriate example for those individuals under your supervision. While we recognize your concern that vital patient services needed to continue, you did not ensure that the NRC was contacted. Had you provided this information to the NRC, the NRC staff could have focused its review on the physicians' qualifications and issued a separate license amendment on an expedited basis to ensure that regulatory compliance was maintained while patient teletherapy services continued.

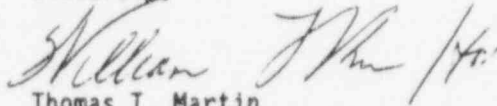
Given the significance of your actions, I have decided, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operational Support, to issue to you the enclosed Notice of Violation. However, serious consideration was given as to whether an Order should be issued that would preclude you from any further involvement in NRC licensed activities for a certain period. On balance, this Notice of Violation is considered sufficient since you were candid at the enforcement conference during which you acknowledged that you had erred and had exercised poor judgment in this matter. You should be aware that any similar conduct on your part in the future could result in more significant enforcement action against you.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence, as well as your reasons as to why the NRC should have confidence that you will comply with NRC requirements in the future. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosed Notice will be placed in the NRC Public Document Room with your address deleted. A copy also is being provided to the Chief Executive Officer of Carlisle Hospital.

The enclosed Notice is 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,



Thomas T. Martin
Regional Administrator

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty to Carlisle Hospital
2. Notice of Violation

NOTICE OF VIOLATION

Robert F. Hall, M.D.

IA 95-018

During an NRC investigation conducted by the NRC Office of Investigations, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is set forth below:

10 CFR 30.10 states, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation.

10 CFR 35.25(a)(3) requires, in part, that a licensee that permits the use of byproduct material by an individual under the supervision of an authorized user, shall periodically review the supervised individual's use of byproduct material and the records to reflect this use.

License Condition 11 of Amendment No. 19 of NRC License No. 37-02385-01, which expired on February 29, 1992, but which remained in effect (until Amendment No. 20 was issued on April 7, 1993) pursuant to a timely renewal application made on October 7, 1991, states that licensed material, shall be used by, or under the supervision of, Charles K. Loh, M.D., or Robert F. Hall, M.D.

10 CFR 35.13(b), in effect at the time the violation occurred, provided that a licensee shall apply for and must receive a license amendment before it permits anyone, except a visiting authorized user described in 10 CFR 35.27, to work as an authorized user under the license.

10 CFR 35.11(b) provides that an individual may use byproduct material in accordance with the regulations in this chapter under the supervision of an authorized user as provided in 10 CFR 35.25, unless prohibited by license condition.

Contrary to the above, from December 3, 1992 to April 7, 1993, you deliberately caused the licensee to violate License Condition 11 of its license and 10 CFR 35.25(a)(3), in that you were Chairman of the Radioisotope Committee, you knew that teletherapy activities were being performed by two individuals who were not listed on the license and did not qualify as visiting authorized users pursuant to 10 CFR 35.27, and you also knew that the two individuals were not under the supervision of Dr. Loh or yourself; and you deliberately failed to: (1) provide the appropriate supervision, in that you did not review the individuals' use of the byproduct materials and the related records reflecting such use; or (2) prevent teletherapy activities from being performed by the two unauthorized individuals until they were named on the NRC license as authorized users.

This is a Severity Level III Violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at King of Prussia, Pennsylvania
this 6th day of June 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555-0001

May 5, 1995

IA 95-014

Darin R. Hanson, Radiographer
Mattingly Testing Services, Inc.

[HOME ADDRESS DELETED
PURSUANT 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION

Dear Mr. Hanson:

This is in reference to NRC Inspection Report 030-20836/95-01 and NRC Investigation Case No. 94-056. The field portions of the inspection and investigation were conducted from January 4-24, 1995 in Billings and other locations in Montana. On February 28, 1995, an inspection report was issued describing apparent violations discovered during the inspection and the preliminary results of the investigation. On March 7, 1995, a transcribed enforcement conference was conducted in the NRC's Arlington, Texas office with Mr. Mark M. Mattingly, the company president and radiation safety officer, and Mr. Bart A. Kutt, the vice president and assistant radiation safety officer.

As described in detail in the inspection report and discussed during the March 7, 1995 conference, the NRC found that Mattingly Testing Services, Inc. (MTS) management and radiography personnel had deliberately violated several NRC requirements when performing radiography on a pipeline near Miles City, Montana. On January 4, 1995, the NRC inspector observed an assistant radiographer performing radiography without being supervised as required by 10 CFR 34.44. You, as the radiographer on that particular job, were required to be present where the sealed sources were being used and to watch the assistant radiographer perform radiography operations. Instead, you were some distance from where radiography was being performed and were unable to watch the assistant radiographer because you were developing radiographic film in a darkroom.

As indicated in the inspection report, you later admitted to the NRC inspector that you were aware of the requirement to supervise the assistant radiographer and stated that you had supervised the individual prior to the NRC inspector's arrival at the job site. Your failure to supervise your assistant is particularly serious, given that the assistant was not fully trained.

The NRC has reviewed the information obtained during its inspection and investigation and has determined that you violated the provisions of 10 CFR 30.10, "Deliberate Misconduct," in that you, as a radiographer, deliberately failed to observe an assistant radiographer performing radiography operations, causing the licensee to be in violation of 10 CFR 34.44. In addition, information obtained from the inspection and investigation indicates that you deliberately failed to ensure that areas were properly posted during radiography operations and that the radiography device was secure by locking the device after each radiographic exposure.

Based on the significance of these deliberate violations, the NRC is issuing you the enclosed Notice of Violation (Notice) to emphasize its concern about willful violations of safety requirements. The violation has been categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (Enforcement Policy). In addition, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$15,500 is being issued this date to MTS. You are on notice that any additional examples of deliberate misconduct on your part may result in more significant sanctions against you as an individual, including an order barring you from any involvement in NRC-licensed activities as provided in 10 CFR 2.202 and 10 CFR 30.10.

The Commission's regulations at 10 CFR 30.10 provide, in part, that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order, or any term, condition or limitation of any license, issued by the Commission, and that any person who violates these requirements may be subject to enforcement action including prohibition from NRC-licensed activities. You should be aware that your actions did not meet the NRC's expectations and caused MTS to be in violation of NRC requirements. A violation of 10 CFR 30.10 may lead to criminal prosecution. The NRC expects full compliance with all applicable NRC requirements and deliberate violation of such requirements will not be tolerated.

You are required to respond to the enclosed Notice and should follow the instructions when preparing your response. In response to the Notice, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to the Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). A copy of this letter and the enclosed Notice with your address removed will be placed in the PDR 45 days from the date of this letter unless you provide a sufficient basis to withdraw this violation. To the extent possible, your response should not include 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.

The responses directed by this letter and the enclosed Notice 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.

Darin R. Hanson

- 3 -

Questions concerning this letter and Notice should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

Sincerely,



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

Enclosure: Notice of Violation

Docket No. 030-20836

License No. 25-21479-01

cc w/Enclosure: State of Montana
Mattingly Testing Services, Inc.

NOTICE OF VIOLATION

Darin R. Hanson

Docket No. 030-20836
License No. 25-21479-01
IA 95-014

During an NRC inspection and investigation conducted at Mattingly Testing Services, Inc. on January 4-24, 1995, as well as information obtained during a transcribed enforcement conference on March 7, 1995, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

10 CFR 30.10 states, in part, that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission. Deliberate misconduct means, in part, an intentional act or omission that the person knows: 1) would cause a licensee to be in violation of any rule, regulation or any term, condition, or limitation of any license issued by the Commission; or 2) constitutes a violation of a procedure of a licensee.

10 CFR 34.2 states that a radiographer means any individual who performs or who, in attendance at the site where the sealed source or sources are being used, personally supervises radiographic operations and who is responsible to the licensee for assuring compliance with the requirements of the Commission's regulations and the conditions of the license.

- A. 10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) the radiographer's personal presence at the site where the sealed sources are being used; (b) the ability of the radiographer to give immediate assistance if required; and (c) the radiographer watching the assistant's performance of the operations referred to in this section.
- B. 10 CFR 34.22(a) requires, in part, that during radiographic operations the sealed source assembly shall be secured in the shielded position each time the source is returned to that position.
- C. 10 CFR 34.42 requires, notwithstanding any provisions in 10 CFR 20.1903, that areas in which radiography is being performed be conspicuously posted as required by 10 CFR 20.1902(a) and (b).

10 CFR 20.1902(a) requires that each radiation area shall be posted with a conspicuous sign or signs bearing the radiation caution symbol and the words "CAUTION, RADIATION AREA."

10 CFR 20.1902(b) requires that each high radiation area shall be posted with a conspicuous sign or signs bearing the radiation caution symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

Contrary to the above, on January 4, 1995, Darin R. Hanson, a radiographer employed by Mattingly Testing Services, Inc., an NRC licensee, deliberately violated NRC requirements by:

1. allowing a radiographer's assistant who was not under the personal supervision of Mr. Hanson to use a radiographic exposure device. Specifically, Mr. Hanson was not watching the assistant's performance of operations including exposure of the source.
2. allowing a radiographer's assistant on January 4, 1995, to not secure by locking the sealed source assembly after returning the source to the shielded position at the termination of a radiographic exposure.
3. not ensuring on January 4, 1995, that radiation areas and high radiation areas, in which the licensee was conducting industrial radiography, were posted. (01013)

This is a Severity Level III violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Darin R. Hanson is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Rockville, Maryland
this 5th day of May 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

May 5, 1995

IA 95-013

Bart A. Kutt
Vice President/Assistant Radiation Safety Officer
Mattingly Testing Services, Inc.

[HOME ADDRESS DELETED
PURSUANT 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION

Dear Mr. Kutt:

This is in reference to NRC Inspection Report 030-20836/95-01 and NRC Investigation Case No. 94-056. The field portions of the inspection and investigation were conducted from January 4-24, 1995 in Billings and other locations in Montana. On February 28, 1995, an inspection report was issued describing apparent violations discovered during the inspection and the preliminary results of the investigation. On March 7, 1995, a transcribed enforcement conference with you and Mr. Mark M. Mattingly, the company president and radiation safety officer, was conducted in the NRC's Arlington, Texas office.

As described in detail in the inspection report and discussed during the March 7, 1995 conference, the NRC found that Mattingly Testing Services, Inc. (MTS) management and radiography personnel had violated a significant number of NRC requirements when performing radiography on a pipeline near Miles City, Montana. The NRC staff determined that MTS personnel had deliberately violated certain radiation safety requirements because MTS management did not believe they were necessary to assure safety.

The NRC has reviewed the information obtained during its inspection and investigation, and the transcribed enforcement conference and has concluded that you engaged in deliberate misconduct when you, the company's vice president and assistant radiation safety officer, failed to ensure audits were conducted of radiography personnel every three months as required and did not ensure that an individual received proper training prior to conducting assistant radiographer activities.

The NRC entrusts radiation safety officials with the responsibility to review and ensure the licensee's compliance with regulatory requirements. In this case, you significantly failed as the assistant Radiation Safety Officer to ensure the licensee's compliance with NRC requirements through audits or reviews of personnel performing radiography. As a result, I am issuing the enclosed Notice of Violation (Notice) to you pursuant to 10 CFR 30.10. The violation has been categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (Enforcement Policy). In addition, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$15,500 is being issued this date to MTS.

The NRC considered issuing an order prohibiting your involvement in NRC-licensed activities, however, based on the circumstances of this case, such an order is not being issued. You are on notice that any additional examples of deliberate misconduct on your part may result in more significant sanctions against you as an individual, including an order barring you from any involvement in NRC-licensed activities as provided in 10 CFR 2.202 and 10 CFR 30.10.

The Commission's regulations at 10 CFR 30.10 provide, in part, that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order, or any term, condition or limitation of any license, issued by the Commission, and that any person who violates these requirements may be subject to enforcement action including prohibition from NRC-licensed activities. You should be aware that your actions did not meet the NRC's expectations and caused MTS to be in violation of NRC requirements. A violation of 10 CFR 30.10 may lead to criminal prosecution. The NRC expects full compliance with all applicable NRC requirements and deliberate violation of such requirements will not be tolerated.

You are required to respond to the enclosed Notice and should follow the instructions when preparing your response. In response to the Notice, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to the Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). A copy of this letter and the enclosed Notice with your address removed will be placed in the PDR 45 days from the date of this letter unless you provide a sufficient basis to withdraw this violation. To the extent possible, your response should not include 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.


The responses directed by this letter and the enclosed Notice 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.

Bart A. Kutt

- 3 -

Questions concerning this letter and Notice should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

Sincerely,


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

Enclosure: Notice of Violation

Docket No. 030-20836
License No. 25-21479-01

cc w/Enclosure: State of Montana
Mattingly Testing Services, Inc.

NOTICE OF VIOLATION

Bart A. Kutt

Docket No. 030-20836
License No. 25-21479-01
IA 95-013

During an NRC inspection and investigation conducted at Mattingly Testing Services, Inc. on January 4-24, 1995, as well as information obtained during a transcribed enforcement conference on March 7, 1995, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

10 CFR 30.10 states, in part, that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission. Deliberate misconduct means, in part, an intentional act or omission that the person knows: 1) would cause a licensee to be in violation of any rule, regulation or any term, condition, or limitation of any license issued by the Commission; or 2) constitutes a violation of a procedure of a licensee.

- A. 10 CFR 34.31(b) requires that the licensee not permit any individual to act as a radiographer's assistant until such individual: (1) has received copies of and instruction in the licensee's operating and emergency procedures; (2) has demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, and radiation survey instruments that the assistant will use; and (3) has demonstrated understanding of the instructions in this paragraph by successfully completing a written or oral test and field examination on the subjects covered.
- B. 10 CFR 34.11(d)(1) requires, in part, that an applicant have an inspection program that includes observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed three months.

License Condition 17 incorporates the inspection program containing the requirements stated in 10 CFR 34.11(d)(1) as submitted in licensee's application dated July 25, 1989, into NRC License 25-21479-01.

Contrary to the above, Bart A. Kutt, the licensee's vice president and assistant radiation safety officer, deliberately caused violations of NRC requirements by:

1. permitting a licensee employee on January 4, 1995, to act as radiographer's assistant without the above requirements being fulfilled in that the individual had not: (1) demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources,

related handling tools, and radiation survey instruments that the assistant used and (2) had not demonstrated understanding of the instructions provided to him by successfully completing a written or oral test and field examination on the subjects covered.

2. not observing the performance of several radiographers involved in radiographic operations during intervals exceeding three months. Specifically, field audits were not performed during; (1) the 4th quarter 1994 for three individuals, (2) the 3rd quarter 1994 for three individuals, (3) the 2nd quarter 1994 for five individuals, and (4) the 1st quarter 1994 for four individuals. The individuals worked continuously throughout 1994 and would have required a field audit every three months. (01013)

This is a Severity Level III violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Bart A. Kutt is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Rockville, Maryland
this 5th day of May 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

June 6, 1995

IA 95-017

Charles K. Loh, M.D.
HOME ADDRESS DELETED
UNDER 2.790

SUBJECT: NOTICE OF VIOLATION
(Enforcement Conference, NRC Inspection Report 030-03018/94-001, and
Office of Investigations (OI) Report 1-94-005R)

Dear Dr. Loh:

On April 25, 1995, the NRC conducted an enforcement conference with Carlisle Hospital and three employees, including yourself, in the Region I office in King of Prussia, Pennsylvania, to discuss the circumstances associated with the performance of teletherapy activities between December 1992 and April 1993 by two individuals who were not authorized, at the time, to perform such activities. Although the hospital had requested that the names of the two individuals be added to the license as authorized users, the individuals performed teletherapy between December 1992 and April 1993 (when the NRC approved the individuals as authorized users), without being listed on the license as authorized users and without being under the supervision of an authorized user, as required. The OI report concluded that you deliberately permitted unauthorized physicians to perform the radiation teletherapy in violation of the license. A copy of the OI synopsis of the investigation was forwarded to the hospital on March 23, 1995.

At the enforcement conference, you admitted that you knew that the two individuals were not listed on the license, were performing teletherapy activities, and were not under the supervision of an authorized user. As the RSO, you were required to ensure compliance with NRC requirements; however, you allowed this violation to continue, thereby deliberately causing Carlisle Hospital to be in violation of the terms of its license. As a result, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,000 (Enclosure 1) has been issued to Carlisle Hospital. Additionally, your actions constitute a violation of the requirements set forth in 10 CFR 30.10. Given that you were the RSO, the violation is classified at Severity Level III.

As the RSO, you were in a position that conferred upon you trust and confidence that you would ensure that licensed activities at the hospital were conducted safely and in accordance with NRC requirements. Your actions between December 1992 and April 1993, did not adhere to these standards, and did not provide an appropriate example for those individuals under your supervision. While we recognize your concern that vital patient services needed to continue, you did not ensure that the NRC was contacted. Had you provided this information to the NRC, the NRC staff could have focused its review on the physicians' qualifications and issued a separate license amendment on an expedited basis to ensure that regulatory compliance was maintained while patient teletherapy services continued.

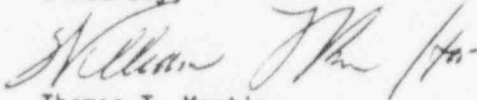
Given the significance of your actions, I have decided, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operational Support, to issue to you the enclosed Notice of Violation. However, serious consideration was given as to whether an Order should be issued that would preclude you from any further involvement in NRC licensed activities for a certain period. On balance, this Notice of Violation is considered sufficient, since you were candid at the enforcement conference during which you acknowledged that you had erred and had exercised poor judgment in this matter. Further, you are no longer the RSO at the facility. You should be aware that any similar conduct on your part in the future could result in more significant enforcement action against you.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence, as well as your reasons as to why the NRC should have confidence that you will comply with NRC requirements in the future. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosed Notice will be placed in the NRC Public Document Room with your address deleted. A copy also is being provided to the Chief Executive Officer of Carlisle Hospital.

The enclosed Notice is 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,



Thomas T. Martin
Regional Administrator

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty to Carlisle Hospital
2. Notice of Violation

NOTICE OF VIOLATION

Charles K. Loh, M.D.

IA 95-017

During an NRC investigation conducted by the NRC Office of Investigations, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is set forth below:

10 CFR 30.10 states, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation.

10 CFR 35.21(a) requires that the licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with regulatory requirements.

License Condition 11 of Amendment No. 19 of NRC License No. 37-02385-01, which expired on February 29, 1992, but which remained in effect (until Amendment No. 20 was issued on April 7, 1993) pursuant to a timely renewal application made on October 7, 1991, states that licensed material, shall be used by, or under the supervision of, Charles K. Loh, M.D., or Robert F. Hall, M.D.

10 CFR 35.13(b), in effect at the time the violation occurred, provided that a licensee shall apply for and must receive a license amendment before it permits anyone, except a visiting authorized user described in 10 CFR 35.27, to work as an authorized user under the license.

10 CFR 35.11(b) provides that an individual may use byproduct material in accordance with the regulations in this chapter under the supervision of an authorized user as provided in 10 CFR 35.25, unless prohibited by license condition.

10 CFR 35.25(a)(3) requires, in part, that a licensee that permits the use of byproduct material by an individual under the supervision of an authorized user, shall periodically review the supervised individual's use of byproduct material and the records to reflect this use.

Contrary to the above, from December 3, 1992 to April 7, 1993, you deliberately caused the licensee to violate 10 CFR 35.21(a), License Condition 11 of its license, and 10 CFR 35.25(a)(3), in that you were the Radiation Safety Officer, you knew that teletherapy activities were being performed by two individuals who were not listed on the license and did not qualify as visiting authorized users pursuant to 10 CFR 35.27, and you also knew that the two individuals were not under the supervision of Dr. Hall or yourself; and you deliberately failed to: (1) provide the appropriate supervision, in that you did not review the individuals' use of the byproduct materials and the related records reflecting such use; or (2) prevent teletherapy activities from being performed by the two unauthorized individuals until they were named on the NRC license as authorized users.

This is a Severity Level III Violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at King of Prussia, Pennsylvania
this 6th day of June 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 5, 1995

IA 95-012

Mark M. Mattingly, President and
Radiation Safety Officer
Mattingly Testing Services, Inc.

[HOME ADDRESS DELETED
PURSUANT 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION

Dear Mr. Mattingly:

This is in reference to NRC Inspection Report 030-20836/95-01 and NRC Investigation Case No. 94-056. The field portions of the inspection and investigation were conducted from January 4-24, 1995 in Billings and other locations in Montana. On February 28, 1995, an inspection report was issued describing apparent violations discovered during the inspection and the preliminary results of the investigation. On March 7, 1995, a transcribed enforcement conference with you and Mr. Bart Kutt, the vice president and assistant radiation safety officer, was conducted in the NRC's Arlington, Texas office.

As described in detail in the inspection report and discussed during the March 7, 1995 conference, the NRC found that Mattingly Testing Services, Inc. (MTS) management and radiography personnel had violated a significant number of NRC requirements when performing radiography on a pipeline near Miles City, Montana. The NRC staff determined that MTS personnel had deliberately violated certain radiation safety requirements because MTS management did not believe they were necessary to assure safety.

The NRC has reviewed the information obtained during its inspection, investigation, and the transcribed enforcement conference and has concluded that you engaged in deliberate misconduct when you, the President and Radiation Safety Officer, failed to amend the NRC license to include a storage location in Billings, Montana and failed to ensure audits were conducted of radiography personnel every three months as required.

The NRC entrusts the Radiation Safety Officer with the responsibility to review and ensure the licensee's compliance with regulatory requirements. In this case, you significantly failed as the Radiation Safety Officer to ensure the licensee's compliance with NRC requirements through audits or reviews of personnel performing radiography. As a result, I am issuing the enclosed Notice of Violation (Notice) to you pursuant to 10 CFR 30.10. The violation has been categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (Enforcement Policy). In addition, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$15,500 is being issued this date to MTS.

The NRC considered issuing an order prohibiting your involvement in NRC-licensed activities, however, based on the circumstances of this case, such an order is not being issued. You are on notice that any additional examples of deliberate misconduct on your part may result in more significant sanctions against you as an individual, including an order barring you from any involvement in NRC-licensed activities as provided in 10 CFR 2.202 and 10 CFR 30.10.

The Commission's regulations in 10 CFR 30.10 provide, in part, that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order, or any term, condition or limitation of any license, issued by the Commission, and that any person who violates these requirements may be subject to enforcement action including prohibition from NRC-licensed activities. You should be aware that your actions did not meet the NRC's expectations and caused MTS to be in violation of NRC requirements. A violation of 10 CFR 30.10 may lead to criminal prosecution. The NRC expects full compliance with all applicable NRC requirements and deliberate violation of such requirements will not be tolerated.

You are required to respond to the enclosed Notice and should follow the instructions when preparing your response. In response to the Notice, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to the Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). A copy of this letter and the enclosed Notice with your address removed will be placed in the PDR 45 days from the date of this letter unless you provide a sufficient basis to withdraw this violation. To the extent possible, your response should not include 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.

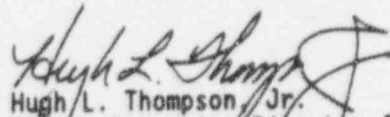
The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Mark M. Mattingly

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Questions concerning this letter and Notice should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

Sincerely,



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

Enclosure: Notice of Violation

Docket No. 030-20836
License No. 25-21479-01

cc w/Enclosure: State of Montana
Mattingly Testing Services, Inc.

NOTICE OF VIOLATION

Mark M. Mattingly

Docket No. 030-20836
License No. 25-21479-01
IA 95-012

During an NRC inspection and investigation conducted at Mattingly Testing Services, Inc. on January 4-24, 1995, as well as information obtained during a transcribed enforcement conference on March 7, 1995, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

10 CFR 30.10 states, in part, that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission. Deliberate misconduct means, in part, an intentional act or omission that the person knows: 1) would cause a licensee to be in violation of any rule, regulation or any term, condition, or limitation of any license issued by the Commission; or 2) constitutes a violation of a procedure of a licensee.

- A. Condition 17 of License No. 25-21479-01 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the license application dated July 25, 1989.

Item 3 of the license application states that 60 Clark Street, Fort Shaw, Montana, will be used for storage of sources and devices.

- B. 10 CFR 34.11(d)(1) requires, in part, that an applicant have an inspection program that includes observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed three months.

License Condition 17 incorporates the inspection program containing the requirements stated in 10 CFR 34.11(d)(1) as submitted in licensee's application dated July 25, 1989, into NRC License 25-21479-01.

Contrary to the above, Mark M. Mattingly, the licensee's president and radiation safety officer, deliberately caused violations of NRC requirements by:

1. allowing the licensee to store and use from June 1994 to January 1995, NRC-licensed sources and devices at 1739 North Frontage Road, Billings, Montana, a location not authorized by Condition 17 of License No. 25-21479-01.
2. not observing the performance of several radiographers involved in radiographic operations during intervals exceeding three months. Specifically, field audits were not performed during; (1) the 4th

quarter 1994 for three individuals, (2) the 3rd quarter 1994 for three individuals, (3) the 2nd quarter 1994 for five individuals, and (4) the 1st quarter 1994 for four individuals. The individuals worked continuously throughout 1994 and would have required a field audit every three months. (01013)

This is a Severity Level III violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Mark M. Mattingly is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Rockville, Maryland
this 5th day of May 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

June 28, 1995

IA 95-020

Mr. Frank Papalia
HOME ADDRESS DELETED
UNDER 2.790

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT 95-001 AND NRC OFFICE OF INVESTIGATIONS
REPORT 1-95-010)

Dear Mr. Papalia:

On May 18, 1995, the NRC conducted an enforcement conference with Quality Inspection Services, Inc. (QIS), Buffalo, New York, and three employees, including yourself, in the NRC Region I office in King of Prussia, Pennsylvania. The purpose of the enforcement conference was to discuss the circumstances associated with three violations of NRC requirements identified during an NRC inspection conducted at a field site in Warren, Pennsylvania, on February 3, 1995, as well as during a subsequent investigation by the NRC Office of Investigations (OI).

The violations involved: (1) the performance of radiography by QIS in Pennsylvania between May 1993 and February 1995 without first obtaining a specific NRC license, or filing the required NRC forms for reciprocity under 10 CFR 150.20; (2) the submittal of inaccurate information by you to an NRC inspector during the inspection; and (3) the failure of radiographers to wear the required alarm ratemeters when performing radiography in Pennsylvania on February 3, 1995. The OI report concluded that you, as the QIS Quality Control Field Supervisor, deliberately provided false information to an NRC inspector. A copy of the OI synopsis of the investigation was forwarded to QIS on May 8, 1995.

During the February 1995 NRC inspection, you were asked if you had ever performed activities with an iridium-192 radiography source at the United Refineries facility in Warren, Pennsylvania. Although you indicated that you performed other kinds of nondestructive testing at the facility, you stated that you did not use the iridium-192 source. However, subsequent NRC review of the QIS files revealed that you had, in fact, used the radiography source, at a minimum, on three occasions in April 1994.

At the enforcement conference, you admitted that you had performed radiography for QIS in Pennsylvania prior to the NRC inspection. You also admitted that when you told the inspector on February 3, 1995, that you had not performed radiography in Pennsylvania, you knew that you conducted radiography in Pennsylvania. You added, however, that you did not provide accurate information, in part, because you were "scared." Your actions deliberately violated the NRC requirements set forth in 10 CFR 30.10(a)(2), which requires that any employee of a licensee may not deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Mr. Frank Papalia

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As the Quality Control Field Supervisor of activities in Pennsylvania, you were in a position that conferred upon you trust and confidence in your ability to ensure that activities were conducted in accordance with NRC requirements and information submitted to the NRC was complete and accurate in all material respects. Your deliberate submittal of false information to the NRC on February 3, 1995, did not adhere to these standards and did not provide an appropriate example for those individuals under your supervision.

Given the significance of deliberately submitting inaccurate information to the NRC, I have decided, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, to issue to you the enclosed Notice of Violation. The violation has been categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (Enforcement Policy).

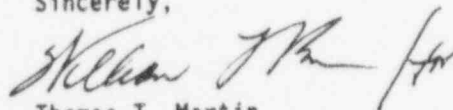
Serious consideration was given as to whether an Order should be issued that would preclude you from any further involvement in NRC-licensed activities for a certain period. However, on balance, the Notice of Violation should be sufficient since you appeared candid and contrite during the enforcement conference, and since in a May 22, 1995 telephone conversation with the NRC investigator, you acknowledged that you lied to the NRC and were remorseful. However, you should be aware that any similar conduct on your part in the future could result in significant enforcement action against you.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence, as well as your reasons as to why the NRC should have confidence that you would not engage in such activities in the future. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosed Notice will be placed in the NRC Public Document Room with your address deleted. A copy also is being provided to the President of Quality Inspection Services.

The enclosed Notice is 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,



Thomas T. Martin
Regional Administrator

Enclosure: Notice of Violation

ENCLOSURE

NOTICE OF VIOLATION

Frank Papalia

IA 95-020

During an NRC inspection conducted on February 3, 1995, as well as a subsequent investigation by the NRC Office of Investigations, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is set forth below:

10 CFR 150.20 provides, in part, that persons who hold a specific license from an Agreement State are granted an NRC general license to conduct the same activity in a non-Agreement State provided the general licensee complies with, *inter alia*, 10 CFR 30.10.

10 CFR 30.10(a)(2) states, in part, that any employee of a licensee may not deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Contrary to the above, on February 3, 1995, Mr. Frank Papalia, an employee of Quality Inspection Services, Inc. (QIS), a New York State licensee engaging in activities in a non-Agreement State (Pennsylvania) under the general license granted by 10 CFR 150.20(a), deliberately submitted to the NRC information that he knew to be incomplete or inaccurate in some respect material to the NRC. Specifically, Mr. Papalia, when questioned by an NRC inspector as to whether he had ever used an iridium-192 source at the United Refineries facility in Warren, Pennsylvania, deliberately provided inaccurate information to the Commission in that he stated that he had not used such source in Pennsylvania. This statement was inaccurate because QIS records indicate that Mr. Papalia had, in fact, performed radiography at the facility on at least three occasions in April 1994, and because Mr. Papalia admitted during an enforcement conference on May 18, 1995, that he had performed radiography at the facility. This information was material because it interfered with the NRC inspection and investigation. (01013)

This is a Severity Level III Violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Frank Papalia is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your

Enclosure

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response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at King of Prussia, Pennsylvania
this 28th day of June 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

April 18, 1995

EA 95-055

Soil and Materials Engineers, Inc.
ATTN: Kenneth W. Kramer
President
43980 Plymouth Oaks Blvd.
Plymouth, Michigan 48170

Dear Mr. Kramer:

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT NO. 030-19574/95001)

This refers to the special safety inspection conducted from February 18 to March 10, 1995, to review the circumstances surrounding the unauthorized removal of a soil moisture density gauge containing NRC-licensed materials. The report documenting this inspection was mailed to you by letter, dated April 3, 1995. A significant violation of NRC requirements was identified during the inspection, and on April 6, 1995, an enforcement conference was held by telephone. Participating in the enforcement conference were you, Mr. James Caldwell, Deputy Director, Division of Radiation Safety and Safeguards, and other members of our respective staffs.

The inspection disclosed that on April 6, 1994, one of your soil moisture density gauges (serial number 8883), containing 10 millicuries of cesium-137 and 50 millicuries of americium-241 in sealed sources, was discovered missing from the locked storage locker at your facility in Plymouth, Michigan. The gauge was last seen on April 4, 1994, and was not scheduled for use on April 5, 1994. On April 11, 1994, the gauge was found by a scrap metal dealer in Oak Creek, Wisconsin, in a shipment from a Detroit, Michigan, scrap dealer.

The loss of licensed materials is a violation of NRC requirements and the violation is fully described in the enclosed Notice of Violation (Notice). In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, the violation is considered a significant failure to control access to licensed materials and is categorized at Severity Level III.

The root cause of the violation and the subsequent corrective actions were discussed during the April 6, 1995, enforcement conference. The major factor contributing to the violation was the failure to control access to the locker where the gauges were stored. The NRC recognizes that corrective actions were taken and consisted of: replacing the locks at your facility in Plymouth, Michigan; limiting the number of available keys to management personnel; and discussing the event with your gauge technicians. You subsequently replaced the locks for the storage lockers at your other facilities and also limited the number of available keys.

As a holder of a license issued by the NRC for the use of byproduct material, the NRC entrusts responsibility for radiation safety to the management of Soil and Materials Engineers, Inc. Incumbent upon each NRC licensee is the

Soil and Materials Engineers, Inc. - 2 -

responsibility to protect the public health and safety by ensuring that all licensed materials are controlled at all times. This violation is of particular significance because licensed materials entered the public domain.

To emphasize the need for strict control of NRC-licensed materials, I have decided to issue the enclosed Notice of Violation for the Severity Level III violation. A civil penalty normally accompanies a Severity Level III violation. The civil penalty adjustment factors in the Enforcement Policy were evaluated and the civil penalty was fully mitigated based on: the self-disclosing nature of the violation; the above described corrective actions; and your performance in the past. The remaining factors in the enforcement policy were also considered and no further adjustment to the base civil penalty is considered appropriate.

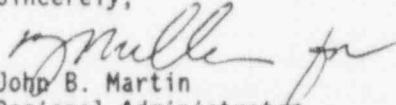
The inspection report described an additional violation concerning the failure to file a written report with the NRC within 30 days of the incident. The NRC recognizes that, while you did not file the required report, you were in contact with the NRC Region III office during that period and did provide the required information. Therefore, this issue is not cited as a violation. Please ensure in the future that any reportable event is properly reported.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your responses will be placed in the NRC 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.

The response directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Public Law No. 96-511.

Sincerely,


John B. Martin
Regional Administrator

Docket No. 030-19574
License No. 21-17158-02

Enclosure: Notice of Violation

NOTICE OF VIOLATION

Soil and Materials
Engineers, Inc.
Plymouth, Michigan

Docket No. 030-19574
License No. 21-17158-02
EA 95-055

During an NRC inspection conducted February 18 to March 10, 1995, a violation of NRC requirements was identified. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

10 CFR 20.1801 requires that a licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

Contrary to the above, from April 4 to April 6, 1994, the licensee did not secure from unauthorized removal or limit access to a Troxler Model 3411B soil moisture density gauge (serial number 8883) containing licensed materials (10 millicuries of cesium-137 and 50 millicuries of americium-241 in sealed sources) located in the controlled area of the licensee's facility at Plymouth, Michigan. (01013)

This is a Severity Level III violation (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Soil and Materials Engineers, Inc. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351 within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a demand for information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Lisle, Illinois
the 18th day of April 1995

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

1. REPORT NUMBER
*(Assigned by NRC, Add Vol., Supp., Rev.,
and Addendum Numbers, if any.)*

NUREG-0940, PART III
Vol. 14, No. 2

2. TITLE AND SUBTITLE

Enforcement Actions: Significant Actions Resolved
Material Licensees
Quarterly Progress Report
April - June 1995

3. DATE REPORT PUBLISHED

| | |
|--------|------|
| MONTH | YEAR |
| August | 1995 |

4. FUND OR GRANT NUMBER

5. AUTHOR(S)

Office of Enforcement

6. TYPE OF REPORT

Technical

7. PERIOD COVERED *(Inclusive Dates)*

8. PERFORMING ORGANIZATION - NAME AND ADDRESS *(If NRC, provide Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address, if contractor, provide name and mailing address.)*

Office of Enforcement
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555-0001

9. SPONSORING ORGANIZATION - NAME AND ADDRESS *(If NRC, type "Same as above"; if contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.)*

Same as above

10. SUPPLEMENTARY NOTES

11. ABSTRACT *(200 words or less)*

This compilation summarizes significant enforcement actions that have been resolved during one quarterly period (April - June 1995) and includes copies of letters, Notices, and Orders sent by the Nuclear Regulatory Commission to material licensees with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC, so that actions can be taken to improve safety by avoiding future violations similar to those described in this publication.

12. KEY WORDS/DESCRIPTORS *(List words or phrases that will assist researchers in locating the report.)*

Diagnostic Radiopharmaceuticals, Teletherapy, Brachytherapy,
Radiation Safety Program, Safety Evaluation, Quality Management
Program, HDR

13. AVAILABILITY STATEMENT

Unlimited

14. SECURITY CLASSIFICATION

(This Page)

Unclassified

(This Report)

Unclassified

15. NUMBER OF PAGES

16. PRICE



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