

METALS EVALUATION & TESTING, Inc.

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NON-DESTRUCTIVE TESTING & INSPECTION SERVICE • WELDER QUALIFICATIONS & PROCEDURES

September 15, 1992

U. S. Nuclear Regulatory Commission
Office of Enforcement
Washington, D.C. 20555

Attention: Director, Office of Enforcement

Subject: "Answer to a Notice of Violation"
"Proposed Imposition of Civil Penalty",
Docket No. 92-0004, ER 92-105

In compliance with 10 CFR 2.205, protesting the civil penalty, in whole or in part, for extenuating circumstances and/or other reasons why the penalty should not be imposed, Metals Evaluation and Testing, Inc., submits the following:

I. Violation Assessed a Civil Penalty

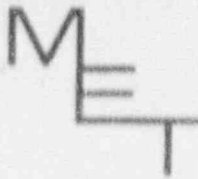
- A. 10 CFR 34.43 (b) requires, in part, that licensees ensure that a survey with a calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference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

Contrary to the above, on January 31, 1992, at NASA-Ames, Moffett Field, California, a licensee radiographer did not perform an adequate survey after each radiographic exposure to determine that the sealed source had been returned to its shielded position. Specifically, the survey did not include the entire circumference of the radiographic exposure device and the source guide tube.

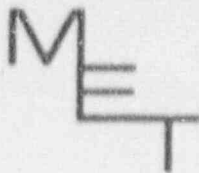
This is a repeat violation

This is a Severity Level (II) violation (Supplement VI).
Civil Penalty - \$7,500.00.

Metals Evaluation & Testing is protesting the civil penalty, in whole or in part, for extenuating circumstances and other reasons as follows:



1. **MET's Response** - Radiographer employed by Metals Evaluation and Testing Inc., failed to specifically survey the entire circumference of the radiographic exposure and source guide tube as required by the letter of the law. However the radiographer did perform a survey of the exposure device (source exit port area of the device) and the general area of the source guide tube (guide tube) and in was located in very close proximity of the exposure device) to verify that the source had been returned to its shielded position in compliance with part of the requirements. The radiographer, however, did not perform a complete survey (the entire circumference and the source tube survey acceptable to the NRC inspector) in compliance with the letter of the law. An investigation of the incident revealed that the radiographer did not willfully, maliciously or with complete disregard for regulations fail to perform a complete survey in compliance with the letter of the law. The survey that the radiographer performed did verify that the source had been returned to its safe shielded position and did not threaten the health and welfare of the general public or the radiographer. Proper survey techniques (the entire circumference of the device and source guide tube) are a constant area of concern, communication and training. However, prior to the present survey technique requirements, radiographers for many, many years performed surveys at the exit port of the exposure device to verify that the source was in the shielded position. It is sometimes hard to change old technique habits over night. MET has and will continue to train and stress to its personnel the importance of performing required surveys of the exposure device and source guide tube in compliance with the Regulations.
2. **NRC Safety Inspection** - On April 23-25, 1991, NRC inspected Metals Evaluation & Testing's activities authorized by 10 CFR 150.20 as reported on NRC Form 241, dated December 31, 1990. Three (3) violations were identified on NRC Form 591. One of the violations noted was "The entire circumference of the exposure device was not surveyed at the completion of the radiographic exposure", 10 CFR 34.43 (b). Another violation noted was alarm rate meters had not been used during radiographic exposures, 10 CFR 34.33 (f). MET was instructed, under the provisions of 10 CFR 2.201 to sign and



date the NRC Form-591 indicating that appropriate corrective action will be taken. In April 1991, failure to survey the entire circumference of the exposure device was not categorized as a severity Level III violation with a proposed civil penalty. Not even a formal letter of violation was issued to MET requiring a formal response for corrective action. In less than one (1) year this item has escalated to a Severity Level III violation with assigned civil penalties? NRC's new escalated Enforcement Policy supposedly went into effect on January 10, 1991.

3. **NRC Information Notice No. 91-49: Enforcement of Safety Requirements for Radiographers** - Note: The Enforcement Policy now gives the following example of a Severity Level III violation, which could lead to a civil penalty or other strong enforcement action:

"Failure, during radiographic operations, to have present or use radiographic equipment, radiation survey instruments, and/or personal monitoring devices as required by Part 34."

The Information Notice No. 91-49, makes no specific example for strong enforcement action involving failure to survey the entire circumference of the exposure device and any source guide tube. However it does make specific mention for failure to perform adequate surveys and the use of alarm ratemeters.

4. **State of California response** - On September 8, 1992, the State of California sent NRC a letter of concern for NRC's enforcement Program and Civil Penalties levied on California Licensees. In the opinion of California's senior inspection and compliance staff, the severity of violations uncovered against California Licensees does not merit the amount of civil penalties imposed.

Based on the above listed extenuating circumstances and other reasons noted, we do not feel that the violation should have been assigned a civil penalty in the sum of \$7,500.00. We, therefore, would like to request that NRC remit or mitigate the penalty.

MET

Thank you in advance for your cooperation in this matter. Hopefully, our response has met with your approval and will allow you to reevaluate the civil penalty assessed against MET. However, should you have any questions or need for additional information or clarification, please do not hesitate to contact the undersigned or Mr. Tom W. Cuthbertson, Consultant, at (408) 253-1349.

Sincerely,

Brook Massey
Brook Massey

President/Radiation Safety Officer

Enclosures

cc: Document Control Desk

cc: Regional Administrator, NRC Region V

cc: Tom W. Cuthbertson, Consultant