

ENCLOSURE

**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

Hagerstown Construction Services, Inc.
Hagerstown, Maryland 21740

Docket No. 150-00019
Maryland License No. MD-43-007-01
EA 97-193

During an NRC inspection conducted on April 17 and 18, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the NRC proposes 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 violations and associated civil penalty are set forth below:

I. VIOLATION ASSESSED A CIVIL PENALTY

10 CFR 30.3 requires, in part, that no person shall possess or use byproduct material except as authorized by a specific or general license issued by the NRC.

10 CFR 150.20(a) provides, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement State subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States under the general license in section 150.20 shall, at least 3 days before engaging in each such activity, file 4 copies of NRC Form 241, "Report of Proposed Activities in Non-Agreement States", with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, between July 6, 1996, and April 11, 1997, Hagerstown Construction Services, a licensee of the State of Maryland (Agreement State), used Troxler Model 3411-B series surface moisture density gauges (containing americium-241 and cesium-137 sealed sources) at locations in Pennsylvania and West Virginia, which are locations under NRC jurisdiction, without a specific license issued by the NRC and without filing Form-241 with the NRC. For example, Hagerstown Construction Services, used the gauges at the Mountainview Reclamation Center in Greencastle, Pennsylvania on 31 days during the period.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$2,750

II. VIOLATIONS NOT ASSESSED A CIVIL PENALTY

10 CFR 71.5(a) requires that a licensee who transports licensed materials outside of the site of usage, as specified in the NRC license, or where transport is on public highways, 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.

- A. 49 CFR 173.475(b) requires that prior to each shipment of any Class 7 (radioactive) materials package, the offerer must ensure by examination or appropriate tests that the package is in unimpaired physical condition except for superficial marks.

Contrary to the above, on April 17, 1997, the licensee transported on public highways a Type A package containing approximately 40 millicuries of americium-241 and 10 millicuries of cesium-137 sealed sources in an impaired physical condition. Specifically, the package was cracked in several places on one side and the corners were worn through.

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

- B. 49 CFR 172.324(b) requires that for each non-bulk package that contains a hazardous substance, the letters "RQ" shall be marked on the package in association with the proper shipping name. Pursuant to 49 CFR 172.101, radioactive material is classified as a hazardous substance.

Contrary to the above, on April 17, 1997, the licensee transported a Type A package containing approximately 40 millicuries of americium-241, which is a reportable quantity of a hazardous substance pursuant to 49 CFR 171.8 and Table 2 of Appendix A to 49 CFR 172.101, and the exterior of the package was not stenciled or otherwise marked "RQ".

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

Pursuant to the provisions of 10 CFR 2.201, Hagerstown Construction Services (Licensee) 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 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, 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 the Enforcement Policy 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: 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.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated at King of Prussia, Pennsylvania
this 1st day of July 1997