FILE
EA 85-01

North American Inspection, Inc.

P.O. Box 88
Laurys Station, PA 18059
(215) 262-1100

August 16, 1985

JL

Director
Office of Inspection and Enforcement
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Subject: North American Inspection, Inc.
License # 37-23370-01

Reference: (A) Docket #30-20982
(B) Inspection EA85-01
(C) N.A.I.I.'s Letter w/Enclosures dated 2-21-85
(D) U.S.N.R.C. Letter dated 8-7-85
imposing Civil Penalties, signed by J.M. Taylor

Gentlemen:

In accordance with Item V of your order imposing civil monetary penalties, North American Inspection is herewith requesting a hearing in the matter concerning said imposition of penalties for reasons as stated in our letter dated February 21, 1985 with enclosures and attachments.

We do not feel, based on your Appendix captioned (Evaluation and Conclusion), that you have adequately justified the penalties defined as Severity Level III based on the U.S.N.R.C.'s Rules and Regulations that apply to us as a licensee. Being that this will be my first encounter with such a hearing, I am herewith requesting that I be advised of my rights and the format normally used for a hearing of this type. Further, is it necessary or permissable for N.A.I.I. to be represented by Legal Counsel?

Respectfully requested,

NORTH AMERICAN INSPECTION, INC.

Robert K. Shumway
President

RKS/ces

cc: Executive Legal Director, U.S.N.R.C.
Washington, D.C. 20555

A25

8508260137 XA

EA 85-01

Conclusion

The above reasons, the NRC staff believes that the violation occurred as stated. As previously stated, although the NRC staff does recognize that the licensee has taken corrective actions, mitigation of the proposed penalty is not warranted. Thus, the violation occurred as stated and a civil penalty in the amount of $50,000 is appropriate.

[FR Doc. 85-19619 Filed 8-15-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 30-20982, License No. 37-23370-01, EA 85-01]

North American Inspection, Inc.; Order Imposing Civil Monetary Penalties

I

North American Inspection, Inc., 3906 Main Street, P.O. Box 88, Laurys Station, Pennsylvania (the "licensee"), is the holder of License No. 37-23370-01 (the "license") issued by the Nuclear Regulatory Commission (the "NRC") which authorizes the licensee to possess and use radioactive materials in accordance with conditions specified therein. License No. 37-23370-01 was issued on April 5, 1984.

II

A safety inspection of the licensee's activities under the license was conducted on October 18-19, 1984 at the licensee's facility in Laurys Station, Pennsylvania, and at a radiography field site in Bethlehem, Pennsylvania. Another NRC safety inspection was conducted on January 10, 1985 at the licensee's facility in Laurys Station, Pennsylvania, and on January 16, 1985 at a radiography field site in Lebanon, New Jersey. As a result of the inspections, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated February 6, 1985. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalties. Responses dated February 21 and 26, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalties were received from the licensee. In addition, at the request of the NRC, a financial statement was provided by the licensee by letter dated April 10, 1985.

III

Upon consideration of the licensee's reponses and the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Five Thousand Dollars ($5,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

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 violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties; and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 7th day of August 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,
Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

In the licensee's February 21 and 26, 1985 and April 10, 1985 responses to the Notice of Violation and Proposed Imposition of Civil Penalties dated February 6, 1985, the licensee denies some of the violations and admits others; requests reduction of the severity level of the violations; and requests that the penalties be waived, claiming that imposition of the civil penalties will be a financial burden to the company. Provided below are (1) a restatement of each violation; (2) a summary of the licensee's response regarding each violation; and (3) the NRC's evaluation of the licensee's response.

Restatement of Violation A

10 CFR 34.31(a) requires that no individual act as a radiographer until that individual can demonstrate his understanding of the instructions which he has received regarding the subjects covered in Appendix A of Part 34 and has successfully completed a written test and a field examination on the subjects covered.

Contrary to the above, on October 18, 1984, at a field site in Bethlehem, Pennsylvania, individuals were permitted to act as radiographers prior to demonstrating their understanding of the subjects outlined in Appendix A of Part 34, prior to passing a written test, and prior to demonstrating their competence to use the licensee's radiographic exposure devices, survey instruments, and related handling tools.

Summary of Licensee's Response Regarding Violation A

The licensee concedes that, for Individual B, management did not produce documents to support Individual B's radiographer status at the time of the inspection.

NRC Evaluation of Licensee's Response Regarding Violation A

At the time of the inspection, the licensee's President (who was also the acting Radiation Safety Officer), the licensee's Operations Manager, and Individual A, who is the husband of Individual B, each told the NRC inspectors that Individual B was only qualified to be a Radiographer's Assistant. At the time of the inspection and at the enforcement conference on November 14, 1984, the licensee did not provide any information to indicate that Individual B had completed all training requirements of the license and 10 CFR Part 34. A recent inspection conducted on June 13 and 14, 1985 at NAI revealed that Individual B had completed the radiographer's examination in April 1984, but did not compete the required practical factors test until February 1985. Since Individual B performed as a radiographer without having satisfied

A25

the required program for qualification, the violation remains as stated.

The fact that Individual C also performed as a radiographer without completing the required training was not disputed in the licensee's response. Therefore, the violation remains as proposed.

Restatement of Violation B

10 CFR 34.41 requires the radiographer or radiographer's assistant to maintain direct surveillance of the operation to protect against unauthorized entry into a high radiation area.

Contrary to the above, on October 18, 1984, at a field site in Bethlehem, Pennsylvania, a high radiation area existed in a building adjacent to the area where radiographic operations were being performed, and direct surveillance was not maintained to protect against unauthorized entry into the high radiation area.

Restatement of Violation C.1

10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited so that an individual who was continuously present in the area could not receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days.

Contrary to the above, on October 18, 1984, at a field site in Bethlehem, Pennsylvania, radiation levels of 200 millirems per hour existed in an unrestricted area of an adjacent building when radiography was being conducted using a cobalt-60 source. Access to this area was not controlled for the purposes of radiation protection.

Summary of Licensee's Response Regarding Violations B and C.1

The licensee's response states that as a service company they were subordinate to Bethlehem Steel Corporation's Radiation Safety Program. The licensee's consultant states that the NRC inspector did not identify the area correctly, access was limited and posted, and surveillance was maintained. The consultant further states, ". . . where the readings were taken by the inspector in the adjacent bay was at an overhead roll-up position and was the worst exposure condition for the day . . ."

NRC Evaluation of Licensee's Response Regarding Violations B and C.1

The licensee's contention that it is subordinate to Bethlehem Steel's Radiation Safety Program is incorrect, and demonstrates an inadequate understanding of the responsibilities of an NRC licensee. The inspectors observed that licensee personnel did not survey and control access to the storage bay adjacent to the end of the building where radiography was taking place, and in this area, the NRC inspector measured a radiation dose rate of 200 millirems per hour. Although the licensee contends that Bethlehem was aware of its radiography activity and restricted personnel from being in the area, Bethlehem Steel representatives informed the inspectors that their Fire Marshall was required to enter this area periodically during his routine tours of the Bethlehem facility. The licensee acknowledges that it did not maintain direct surveillance of this area. Therefore, the violations remain as proposed.

Restatement of Violation C.2

10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited so that an individual who was continuously present in the area could not receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days.

Contrary to the above, on October 4, 1984, radiation levels in excess of the limits set forth in 10 CFR 20.105(b) existed in a restaurant which is located 44 feet from the licensee's facility in Laurys Station, Pennsylvania in which radiography took place.

Summary of Licensee's Response Regarding Violation C.2

The licensee contends that the radiation levels outside the licensee's facility in Laurys Station, Pennsylvania never exceeded the limits of 10 CFR 20.105.

NRC Evaluation of Licensee's Response Regarding Violation C.2

The licensee's survey report for October 4, 1984, which was examined at the time of the NRC inspection, indicated that a radiation level of two millirems per hour existed at 200 feet from the source in all directions. While the licensee now contends that this recorded survey is in error, the licensee does not provide the reasons why the record of the survey was incorrect, and did not provide any information in their response regarding the actual radiation levels measured by the radiographer in the unrestricted area in the vicinity of the Laurys Station facility. This would include the areas outside the unshielded bay doors on the south side of the facility, and all other areas to which access is not controlled by the licensee. Therefore, the violation remains as proposed.

Restatement of Violation D

10 CFR 34.29(b) requires that each entrance used for personnel access to the high radiation area in a permanent radiographic installation have both visible and audible warning signals to warn of the presence of radiation. The visible signal is required to be actuated by radiation whenever the source is exposed and the audible signal is required to be actuated when an attempt is made to enter the installation while the source is exposed.

Contrary to the above, as of October 18, 1984, the permanent radiographic installation located in the Laurys Station, Pennsylvania facility did not have the required warning signals installed.

Summary of Licensee's Response Regarding Violation D

The licensee contends that the facility located in Laurys Station, Pennsylvania is not a permanent radiographic installation.

NRC Evaluation of Licensee's Response Regarding Violation D

10 CFR 34.29 defines a permanent radiographic installation as ". . . a shielded installation or structure designed or intended for radiography and in which radiography is regularly performed."

In their response, the licensee indicates that the Laurys Station facility is a shielded structure and also indicates that two different radiography firms have performed radiography there since at least 1975. Further, information supplied by the licensee to the NRC indicated that this facility was used regularly between April and October 1, 1984. Since the facility is shielded, apparently intended for radiography, and radiography was regularly performed there, the Laurys Station facility met the definition of a "permanent radiographic installation" as defined by 10 CFR 34.2(h). Therefore, since the required warning signals were not installed, a violation of 10 CFR 34.29 remains as proposed.

Restatement of Violations E.1, E.2, and E.3

10 CFR 71.5(a) requires that licensed material being transported comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170–189.

1. 49 CFR 172.403(c) requires that packages containing radioactive material with radiation levels in excess of 50 millirem per hour at the package surface or 1 millirem per hour at three

A25

feet be affixed with a Radioactive Y III label.

ary to the above, on October 19, 19.. a radioactive exposure device exhibiting radiation levels of 60 millirem per hour at the surface and 1-2 millirem per hour at three feet was transported without a Radioactive Yellow III label affixed to the device.

2. 49 CFR 172.504(a) requires that a vehicle carrying packages bearing the Radioactive Yellow III level be placarded on each end and each side with "Radioactive" placards.

Contrary to the above, on October 19, 1984, a radioactive exposure device that should have been labeled with a Radioactive Yellow III label was transported in a vehicle which was not properly placarded.

3. 49 CFR 173.448(a) requires each shipment of radioactive material to be secured in order to prevent shifting during normal transportation conditions.

Contrary to the above, on October 18, 1984, a radioactive exposure device was transported without being secured to the vehicle in order to prevent shifting during normal transportation.

Summary of Licensee's Response Regarding Violations E.1, E.2, and E.3

T licensee states ". . . management p l disclosed that there exists a la understanding in part of this procedure," referring to 49 CFR 171 through 177. The licensee contends that the NRC inspector did not witness the use of the truck, but obtained hearsay information from a licensee employee and contends that the materials were in storage. The licensee also contends that the procedure in its manual specifies compliance with DOT regulations.

NRC Evaluation of Licensee's Response Regarding Violations E.1, E.2, and E.3

At the time of the inspection, the inspectors were informed by licensee personnel that the vehicle they had inspected was used the previous day to transport licensed material and that the truck was in the same condition when the inspectors observed it as it was the previous day.

The NRC utilizes observations by the inspectors, statements by licensee personnel, records maintained by the licensee and measurements made by inspectors as the bases for determining compliance with NRC regulations and license conditions. In this instance, NRC measurement of the radiation levels fro package in question and st s from licensee employees con ing the conditions of transport of the package provided the bases for the violation. Further, regarding the licensee's procedures which specify compliance with DOT regulations, the failure to implement these procedures and comply with the appropriate regulations were the bases for the violation. Therefore, the violations remain as proposed.

Restatement of Violation F

10 CFR 34.23(b) requires that a physical radiation survey be made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device must be surveyed and, if the device has a source guide tube, the survey must include the entire length of the guide tube.

Contrary to the above, on October 18, 1984, a radiographer's assistant did not perform a survey that was adequate to determine that the sealed source had returned to its shielded position in that the survey did not include the entire circumference of the exposure device and the entire length of the guide tube.

Summary of Licensee's Response Regarding Violation F

The licensee acknowledges the violation, but contends the requirement's intent was fulfilled. The licensee urges these requirements be administered and implemented with discretion.

NRC Evaluation of Licensee's Response Regarding Violation F

The meaning of the requirement is clear; namely, that a complete survey of the entire circumference of the exposure device and the entire length of the guide tube must be made after each radiographic exposure. The inspectors observed that neither Individual B nor Individual C performed these surveys as required. Therefore, the violation remains as proposed. The inspector noted that Individual A, the only qualified individual performing radiography the day of the inspection, did survey the guide tube.

Restatement of Violation G

10 CFR 34.27 requires that a utilization log be maintained indicating the plant or site where the radiation expsoure devices are used.

Contrary to the above, on October 19, 1984, a cobalt-60 exposure device was used at a field site in Bethlehem, Pennsylvania, but such use was not indicated in the utilization log.

Summary of Licensee's Response Regarding Violation G

The licensee contends that this was a misunderstanding by the NRC inspector because he thought the "check-out and storage form" was being used as a utilization log. The licensee states that the storage utilization log would have been completed when the radiographer's shift was completed.

NRC Evaluation of Licensee's Response Regarding Violation G

10 CFR 34.27 requires that a log be maintained current where devices are used. The purpose of the log is defeated if entries are made when use of the device is complete and the device is returned to the storage location. The storage utilization log is intended to record the location of the exposure devices when they are in the field. The NRC inspector verified, while reviewing the form, that a device had been removed from storage and the storage utilization log was not completed to reflect this removal. Therefore, the violation remains as proposed.

Restatement of Violation H

10 CFR 20.408(b) requires that a report be sent to the NRC of an individual's exposure to radiation when he terminates employment.

Contary to the above, since April 5, 1984, four individuals terminated employment, but as of October 19, 1984, termination reports were not provided to the NRC.

Summary of Licensee's Response Regarding Violation H

The licensee acknowledges this violation.

NRC Evaluation of Licensee's Response Regarding Violation H

No evaluation required.

Restatement of Violation I

Condition 17 of License No. 37-23370-01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application dated January 31, 1984, and letters dated March 22, 1984 and May 4, 1984.

Item 5.3.3 on page 5.2 of the application dated January 31, 1948, requires that a person hired with radiographer credentials from another company complete a practical performance examination before being assigned to perform radiography.

Contrary to the above, as of January 11, 1985, a person hired with radiographer credentials from another company did not complete a practical performance examination before being assigned to perform radiography.

A25

Summary of Licensee's Response Regarding Violation I

The licensee does not deny this violation.

NRC Evaluation of Licensee's Response Regarding Violation I

No evaluation required.

Restatement of Violation I

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

Contrary to the above, on January 16, 1985, a radiographer performed a number of radiographic exposures and cranked the source from the end of the guide tube to the shielded position in the exposure device each time, but did not secure the source between each exposure.

Summary of Licensee's Response Regarding Violation I

The licensee stated ". . . we do not consider 'secure' to having the same meaning as 'lock'. Otherwise, why would both words be used in paragraph 10 CFR 34.22(a) & (b) if one word meant the same as both." The licensee stated that the radiographer properly surveyed his camera to assure that the source was in the secured position and the camera was under his constant surveillance at all times.

NRC Evaluation of Licensee's Response Regarding Violation I

The requirement in 10 CFR 34.22 to secure the source assembly in the shielded position each time means that the licensee must do more than merely retract the source to the shielded position and keep it under observation. Some positive action is required to prevent the inadvertent release of the source from the shielded position if the device or crank is moved. For most radiographic sources this may indeed mean using the locking device on the source. But the requirement to secure it after each exposure is separate from the requirement to keep the source locked if it is not under direct surveillance. In this case the device was not locked or otherwise positively secured between exposures and the violation remains as proposed.

Summary of Licensee's Response to Proposed Imposition of Civil Penalities

The licensee maintains that the civil penalty should be withdrawn due to its financial condition. It claims to have been in business only a short time (approximately 16 monhts) and to have been undercapitalized from the outset. At the request of NRC Region I, the licensee submitted financial statements in support of this position indicating that it has a substantial accumulated debt. It further maintains that this civil penalty, when coupled with current tax liabilities and operating costs, will force the company to file for protection under the Federal Bankruptcy Laws, Chapter 11.

NRC Evaluation of Licensee's Response to Proposed Imposition of Civil Penalities

The Enforcement Policy makes clear that is not the intent of a civil penalty to put a licensee out of business or adversely affect a licensee's ability to safely conduct licensed operations. The assessment of a civil penalty should take into account a licensee's ability to pay. However, after the staff analysis of the financial statement submitted with the licensee's letter of April 10, 1985, the NRC is not convinced that civil penalties of the magnitude proposed ($5,000) will put this licensee out of business. Although it is conceded that the company may have a cash flow problem, the licensee's net sales for the last nine months of CY 1984 should enable the licensee to pay the civil penalty and to safely conduct licensed operations. This is especially true since much of the company's debt is owed to either its majority or minority stockholders.

NRC Conclusion

The licensee's response does not justify withdrawal of any of the violations, or reducing the severity level of the violations. Accordingly, civil penalities of Five Thousand Dollars are imposed.

[FR Doc. 85-19620 Filed 8-15-85; 8:45 am]
BILLING CODE 7590-01-M

(Docket No. 50-387)

Pennsylvania Power and Light Co. et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part requests by the licensee for amendments to Facility Operating License NPF-14, issued to the Pennsylvania Power and Light Company, for operation of the Susquehanna Steam Electric Station, Unit 1 located in Luzerne County, Pennsylvania. The Notice of Consideration of Issuance of Amendments was published in the Federal Register on December 31, 1984 and January 23, 1985 (49 FR 252) and (50 FR 3051) respectively.

The amendments as proposed by the licensee, would change the Unit 1 Technical Specifications as follows: (1) Page 3/4 3-55/Table 4.3.6-1: Changing Channel Calibration surveillance intervals to be less conservative than the present requirement. Experience has shown that electrical equipment will tend to drift or fail and as a result surveillance requirements were established. The frequency of surveillance has been based on the difficulty in conducting the surveillance test and the consequence of equipment failure. The staff has defined the required surveillance intervals on a generic basis in the standard Technical Specifications. The licensee has proposed substantial departures from the requirements in the standard Technical Specifications, but has not provided an acceptable basis for this departure from the staff's judgment. Therefore, the staff has denied the licensee's request. (2) Page 3/4 3-8: Incorporating a quarterly surveillance interval for the channel functional test for the Scram Discharge Volume (SDV) float switches. The staff has denied this request and requires the licensee to test on a monthly basis. The objective of the SDV modification was to provide reliable instrumentation which can accommodate a single random failure or potential common-cause failures for all postulated SDV filling events. The basis for this denial is the same as that stated above. Additionally, experience has shown that problems have been experienced in the past with these SDV float switches and these problems have been discovered as a result of the surveillance tests. Therefore, the staff finds the monthly testing interval to serve a useful purpose. (3) Page 3/4 5-5/Insert A: Including a new surveillance requirement to test the LOCA/false LOCA logic in support of two unit operation. The staff has denied this proposal due to the potentially long time lapses between testing of the LOCA/false LOCA logic. The staff finds that the licensee's proposal does not provide good assurance that the LOCA/false LOCA logic will be surveilled on an appropriate schedule. The staff understands that the licensee has undertaken a study to determine more accurately an appropriate surveillance requirement based on this study. It is the staff's understanding that when this study is completed the licensee will submit it to the staff along with a request for new surveillance requirement for review and approval. (4) Page 3/4 7-8 through 3/4 7-30/Snubbers:

A25