



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

November 17, 1997

IA 97-079

Mr. Kent Dvorak
Construction Services Manager
Terracon Companies, Inc.
16000 College Blvd.
Lenexa, Kansas 66219-1367

SUBJECT: NOTICE OF VIOLATION
(NRC Investigation Report No. 4-97-010)

Dear Mr. Dvorak:

This refers to the predecisional enforcement conference conducted with you and other representatives of The Terracon Companies, Inc. (Terracon), on October 21, 1997, in the NRC's Region IV office in Arlington, Texas. This conference was conducted to discuss two apparent violations of NRC requirements related to Terracon's use of portable nuclear gauges in construction-related work, including an apparent deliberate failure to have gauge operators attend a manufacturer's safety/training course prior to using gauges. On October 8, 1997, the conclusions of the investigation and the NRC's intention to conduct a predecisional enforcement conference with Terracon and you were discussed with you. The apparent violations were described in an inspection report issued on October 9, 1997.

Based on the information developed during the inspection and investigation, and the information discussed at the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and involves your deliberate failure to assure that individuals received formal training prior to using portable nuclear gauges, as Terracon had committed to in its NRC license application.

The NRC acknowledges your and Terracon's position that operators were given in-house training prior to using gauges, including training regarding radiation safety. Nonetheless, Terracon committed in its NRC license application that all operators would complete an operator safety/training course conducted by the gauge manufacturer. Evidence developed during the NRC's investigation of this matter, as well as during the conference on October 21, indicates that you, as the assistant radiation safety officer responsible for Terracon's Lenexa, Kansas office knew this was required, and yet permitted operators to use gauges prior to receiving this formal training.

Although there were no safety consequences of this violation, the NRC considers this a matter of significant regulatory concern because you chose for business reasons to use in-house training rather than comply with this requirement. As an individual engaged in NRC-licensed activities, you were in a position that conferred upon you trust and confidence in your ability to assure that activities were conducted in accordance with NRC requirements. Therefore, this violation has been categorized at Severity Level III in

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Mr. Kent Dvorak

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accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

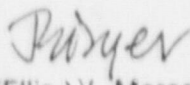
While the NRC has decided to issue the enclosed Notice of Violation in this case, based in part on your attitude and acceptance of responsibility, you should be aware that a violation of 10 CFR 30.10, "Deliberate Misconduct," allows the issuance of orders and other civil sanctions directly to unlicensed persons who, through their deliberate misconduct, cause a licensee to be in violation of NRC requirements. Deliberate misconduct includes an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, or training instruction. An order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC-licensed facilities. A violation of this regulation as set forth in 10 CFR 30.10, which we provided to you in our October 9, 1997 letter, may also lead to criminal prosecution. You are on notice that any similar conduct on your part in the future could result in significant enforcement action against you.

In addition to the Notice of Violation being issued to you, this violation resulted in the NRC issuing a Notice of Violation and Proposed Imposition of Civil Penalty to your employer. A copy of this action is enclosed.

You are required to respond to this letter and Notice 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 planned to prevent recurrence. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with 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). In addition, the NRC will place a copy of the letter sent to you on October 9, 1997.

Sincerely,


fw Ellis W. Merschoff
Regional Administrator

Docket No. 030-32176
License No. 15-27070-01

Enclosure:

1. Notice of Violation
2. Notice of Violation and Proposed Imposition of Civil Penalty (EA 97-425)

Mr. Kent Dvorak

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bcc w/Enclosure:

PDR

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EDO (O-17G21)

DEDO (O-17G21)

OE (O-7H5)

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