

## NOTICE OF VIOLATION

Mr. Kent Dvorak

IA 97-079

During an NRC inspection and investigation completed October 1, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 30.10 (a) 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 term, condition or limitation of any license issued by the Commission. 10 CFR 30.10 (c) states, in part, that deliberate misconduct by a person means an intentional act or omission that the person knows would cause a licensee to be in violation of any term, condition or limitation of any license issued by the Commission.

Condition 18A of NRC Materials license 15-27070-01 (The Terracon Companies, Inc.) incorporates by reference statements made by the licensee in a letter dated September 14, 1992. Page 3 of the "Radiation Safety Plan" enclosed with the letter dated September 14, 1992, states, in part, that all operators will complete a manufacturer's operator safety/training course. It further states that no Terracon employee may possess or operate a sealed source nuclear gauge until trained and authorized by the Corporate RSC.

Contrary to the above, on at least three occasions in 1995, Mr. Kent Dvorak, the licensee's assistant radiation safety officer responsible for its Lenexa, Kansas office, engaged in deliberate misconduct when he deliberately authorized licensee employees to possess or operate sealed source nuclear gauges knowing that such employees had not completed a manufacturer's operator safety/training course.

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

Pursuant to the provisions of 10 CFR 2.201, Mr. Dvorak 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 violations, 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 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.

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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 Arlington, Texas  
this 17th day of November 1997