



TEXAS ENGINEERING EXPERIMENT STATION

Office of the Director

18 September 1986

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

Docket No. 50-128  
License No. R-83  
EA 86-105

Reference: USNRC Notice of Violation and Proposed Imposition of Civil Penalty  
Dated July 22, 1986  
(NRC Inspection and Report No. 50-128/86-01)

Subject: Licensee Request for Remission of Proposed Civil Penalty

Dear Sir:

By this letter, the Texas Engineering Experiment Station (Licensee), a part of the Texas A&M University System, submits the following position as a basis to request the removal of the proposed civil penalty in the amount of \$1,250 for admitted violations involving human error for which there was no potential reactor safety or personnel safety question as stated in the above referenced USNRC Notice. The licensee contends that the stated violations issued by letter dated July 22, 1986 should be classified as Severity Level V incidents and that the incidents of March 10, 1986 and May 1, 1986 have been improperly considered as aggregate to imply a Severity Level III problem. In reference to the Notice of Violation and Proposed Imposition of Civil Penalty, listed above, the Licensee's response concerning Item C of the alleged violations are presented in a separate letter dated September 18, 1986, to the Director, Office of Inspection and Enforcement. It is further requested that the response letter to the violations be referred to in your evaluation.

It is the Licensee's position that the aggregate violation interpretation of the two incidents should not be used to justify a civil penalty in order to stress a need to correct human error when there is no potential safety related consequence. In reference to 10CFR2, Appendix C, Supplement I - Severity Categories, the incidents of March 10, 1986 and May 1, 1986 are clearly no greater than Severity Level V violations which have minor safety or environmental significance. In the case of Severity Level IV classification such violations must have more than minor safety or environmental significance. In fact, the admitted violations had no safety or environmental significance.

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The licensee is of the opinion that non-safety related events involving human error should be corrected through improved training programs and procedural changes as opposed to civil penalty considerations. Operational restrictions are far more effective than a civil penalty in pointing out the errors made by the operators and to protect against repeated occurrences in the future. For example, the limiting \$.30 sample worth restriction for the removal of non-secured experiments when the reactor is critical is very positive enforcement action and is more restrictive than the Technical Specification limit of one dollar. The special training given to operators and the additional operational restrictions on the handling of experiments were actions taken that sufficiently corrected the operator errors.

The Licensee is concerned that a proposed civil penalty for non-safety related human error will have a degrading effect upon the future performance of research reactor operators and will obviously affect all research reactor facilities. To operate reactors safely under undue pressure could lead to poor job performance and is surely not the intent of the NRC enforcement program. However, this might well be the effect of such a civil penalty. A viable operations program which requires the free flow of information between licensed operators, management, licensees, and the NRC could become less effective and more difficult to maintain if a policy is established to impose civil penalties for non-safety related violations.

In conclusion the licensee respectfully requests, based on the position stated above, that the proposed civil penalty be removed from consideration based on an improper severity level classification and the question of justification of civil penalty action when not based on actual or even potential safety related events as is required in 10CFR2, Appendix C, Supplement I - Severity Categories, even for Severity Level IV and Severity Level V classifications of violations.

Respectfully submitted,

*Herbert H. Richardson*

Dr. H. H. Richardson, Director  
Texas Engineering Experiment Station

Sworn to before me the undersigned authority this 18th day of September  
1986.

*Betty Jean Rooley*  
Notary Public  
Brazos County, Texas

cc: R. D. Martin, USNRC, Region IV  
C. Erdman, Associate Dean, College of Engineering  
K. Peddicord, Head, Department of Nuclear Engineering  
F. Jennings, Chairman, Reactor Safety Board  
D. Feltz, Director, Nuclear Science Center