



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION II  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

August 22, 1997

EA 97-237

Scott Nelson, President  
H. H. Holmes Testing  
Laboratories, Inc.  
170 Shepherd Avenue  
Wheeling, IL 60090

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -  
\$2,500  
(NRC Investigation Report No. 3-96-040)

Dear Mr. Nelson:

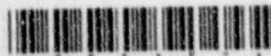
This refers to the investigation conducted by the NRC Office of Investigations (OI) from July 29, 1996 through April 25, 1997. A synopsis of the investigation results was sent to you by a letter dated May 28, 1997. Our letter described one apparent violation which was being considered for escalated enforcement action. The apparent violation involved a failure to file an NRC Form 241 as required by 10 CFR 150.20. H. H. Holmes Testing Laboratories, Inc. (HHH) was provided the opportunity to respond to the apparent violation in writing or to request a predecisional enforcement conference. You provided a written response to the apparent violation in a letter dated June 13, 1997, and elected not to pursue a predecisional enforcement conference.

Based on the information developed during the investigation and the information that you provided in your June 13, 1997 letter, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding it are described in detail in the subject investigation report. The violation involved failures, on multiple occasions between September 1992 and December 1996, the statute of limitations period for assessing civil penalties (28 USC 2462), to obtain an NRC license or to file an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," prior to conducting licensed activities in Wisconsin and Indiana. These states are areas where the NRC maintains jurisdiction for regulating the use of byproduct material.

In your June 13, 1997 letter, HHH acknowledged the violation and attributed its occurrence to a lack of understanding of the reciprocity process. However, representatives of HHH have had ample opportunities to understand and implement the reciprocity requirements as described in 10 CFR Part 150. The OI investigation established that HHH received a letter dated April 26, 1990, from the Illinois Department of Nuclear Safety (IDNS) which stated, in part, that "when working in non-Agreement States the appropriate NRC region must be contacted." Included with the letter was a map of Agreement States, a map of NRC regions, and telephone numbers for each NRC regional office. In July 1993, an NRC representative accompanied an IDNS inspector during an inspection at your facility.

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This individual explained the reciprocity process to you in detail, including the requirement to file an NRC Form 241. On November 4, 1996, the same NRC representative explained to you the NRC's reciprocity regulations and jurisdiction in non-Agreement States and at Federal facilities located in Agreement States. In issue 96-1 of the July 1996 IDNS newsletter "Divisions Notes," sent to all Illinois material licensees, the reciprocity process was discussed, including an explanation of facilities considered to be operating under exclusive Federal jurisdiction within the state of Illinois, requiring either an NRC license or filing of an NRC Form 241 prior to working in those areas. Finally, Condition 1 of your State license also specifically states, in part, that radioactive material shall be used at temporary jobsites in the State of Illinois. Based on the circumstances of this case, the NRC has concluded that the violation was the result of, at least, careless disregard for the involved regulatory requirement.

As radiation safety officer and company official, you are expected to be knowledgeable of and abide by all rules, regulations and license requirements which are applicable to your operation. The NRC considers this failure to obtain authorization to use byproduct material in areas under its jurisdiction, by obtaining an NRC license or filing an NRC Form 241, to be a matter of significant regulatory concern because: (1) the failure to obtain NRC authorization for such activities denies NRC the opportunity to assure the activities are conducted in compliance with all NRC radiation safety requirements; (2) information regarding reciprocity was made available to HHH representatives, yet HHH did not file an NRC Form 241 prior to working in non-Agreement States and (3) HHH actions demonstrate, at least, careless disregard for compliance with federal requirements. The NRC relies on licensees and their employees to fully understand and comply with NRC requirements prior to performing licensed activities. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, the violation has been categorized at Severity Level III.

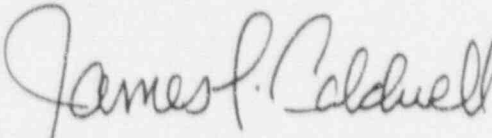
In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III violation. Because of the willful nature of the violation, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Since the violation was reported to the NRC by IDNS, no credit is warranted for identification. With regard to corrective actions, your letter dated June 13, 1997, indicates that all use of cesium-137 and americium-241 to perform moisture density measurements ceased in non-Agreement States until you had applied for and received an NRC license to conduct such operations. You received an NRC license under the name of Nelson Leasing on March 20, 1997. Based on our review of the corrective actions, we have determined that credit is warranted.

Therefore, to emphasize the importance of complying with NRC requirements and to ensure prompt identification of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$2,500 for the Severity Level III violation. Issuance of this Notice may subject you to increased inspection effort. In addition, you are on notice that future violations of NRC requirements may subject you to more significant sanctions. Furthermore, any willful violations in the future may subject you as an individual to civil and criminal sanctions.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed on the docket in your letter dated June 13, 1997. Therefore, you are not required to respond to the provisions of 10 CFR 2.201 unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

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).

Sincerely,

  
for A. Bill Beach  
Regional Administrator

Docket No. 150-00012  
License No. IL-01828-01

Enclosure: Notice of Violation and Proposed  
Imposition of Civil Penalty

cc w/enclosure:  
Nelson Leasing file  
Illinois Department of  
Nuclear Safety (IDNS)

DISTRIBUTION:

~~PUBLIC INFO~~

SECY

CA

LCallan, EDO

AThadani, DEDO

HThompson, DEDR

LChandler, OGC

JGoldberg, OGC

CPaperiello, NMSS

DCool, NMSS

Enforcement Coordinators

RI, RII and RIV

JGilliland, OPA

HBell, OIG

GCaputo, OI

LTremper, OC

DRoss, AEOD

OE:ES

OE:EA (2)

State of Illinois

GJohnson, OC/DAF

RAO:RIII

SLO:RIII

PAO:RIII

OC/LFDCB