

NUDOCs



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 31, 1995

EA 95-101

Testco, Inc.
ATTN: James L. Shelton
President and Radiation Safety Officer
Post Office Box 18511
Greensboro, North Carolina 27417

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$5,000
(NRC Inspection Report No. 150-00032/94-01 and Investigation
No. 2-92-027R)

Dear Mr. Shelton:

This letter refers to a special inspection conducted by Mr. Jeffrey Mumper of this office on August 31 and September 6, 1994, and an investigation conducted by the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) completed on April 25, 1995. During the inspection and investigation, the NRC examined the facts and circumstances surrounding Testco, Inc.'s (Testco's) use of radioactive material for the performance of radiographic operations in the Commonwealth of Virginia without notifying the NRC as required by 10 CFR 150.20(b)(1). You were informed of the preliminary inspection findings during the exit meeting conducted on August 31, 1994, and the synopsis of the OI investigation which was sent to you by letter dated June 27, 1995. The latter correspondence also provided you an opportunity to attend a predecisional enforcement conference to discuss the apparent violations, their cause, and your corrective action to preclude recurrence. A transcribed conference was conducted on July 27, 1995, in Greensboro, North Carolina. The report summarizing the conference was sent to you by letter dated September 5, 1995.

Based on the information developed during the inspection and investigation as well as the information that you provided during the conference, 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). The violation involved your use of radioactive materials in areas under NRC jurisdiction without obtaining a specific NRC license or filing Form-241, "Report of Proposed Activities in Non-Agreement States", as required pursuant to the general NRC license in 10 CFR 150.20. The NRC identified at least 11 instances when your company performed licensed activities in Virginia during the period January 1992 through January 1994 without notifying the NRC.

In addition, on numerous occasions you performed work at military installations in areas of exclusive federal jurisdiction within Agreement States during the period 1990 through 1994 without filing a Form-241. Although these examples are not being cited, you are now on notice that 10 CFR 30.3 requires that such work be performed under a specific or general

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NRC license. Future such failures to comply with the requirements of 10 CFR 30.3 and 10 CFR 150.20 may be considered willful and may result in additional enforcement sanctions. In the future, if Testco does work on Federal property, even though the property may be located in an Agreement State, Testco should get a written determination from the Federal agency controlling the property in order to clarify whether the location of work is an area of exclusive Federal jurisdiction.

Based on the information gathered in this case, the NRC concluded that the violation resulted directly from the deliberate misconduct of the President/Radiation Safety Officer (RSO), who willfully disregarded regulatory requirements by conducting licensed work in areas under NRC jurisdiction without filing appropriate documentation or taking steps to ensure that appropriate documentation was filed with the NRC. In addition to the investigative findings, this determination is also based partly on statements made by the RSO at the conference indicating that he was knowledgeable of the requirements of 10 CFR 150.20, he became aware of the failure to submit the Form-241's, and he failed to take any corrective action for the violations. The RSO did not take corrective action to assure that Form-241's were filed until the NRC inspection focused on the Form-241 issue in August 1994.

As a result of the aforementioned activities, an Order is being issued on this date prohibiting the President/RSO (Mr. James L. Shelton) from controlling or engaging in NRC-licensed activities for a period of three years. Based on the Order, for the period of time that the prohibition is in effect, Testco cannot conduct licensed activities in areas under NRC jurisdiction as long as Mr. Shelton remains as President or RSO, or maintains any position that would allow him to have any control over the NRC-licensed activity including, but not limited to, assigning, supervising, directing, or assisting licensed activities within NRC jurisdiction.

Testco, as an entity licensed to possess and use radioactive material, is responsible for the acts of its employees. It is essential that the NRC be able to maintain the highest trust in individuals working with licensed material and that licensees appropriately manage their programs to ensure that personnel fully understand the importance of complying with regulatory requirements. The willful nature of the violation brings into question the integrity of the RSO and his commitment to assuring that radiographic operations are conducted safely and in accordance with applicable State and NRC requirements. In addition, the violation denied the NRC the opportunity to inspect Testco's activities in non-Agreement States thereby impeding the NRC's ability to perform its statutory responsibility of verifying that licensed activities are performed in accordance with NRC requirements. Therefore, this violation has been categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 (60 FR 34381; June 30, 1995).

In accordance with the Enforcement Policy, the NRC considered the issuance of a civil penalty in the amount of \$10,000. No credit was determined to be warranted for *Identification* based on NRC's identification of the uncorrected

violation during the August 1994 inspection and the conclusion that the violation was willful. At the predecisional enforcement conference, you stated that your corrective actions subsequent to NRC identification of the violation included: (1) development of a listing of authorized sites which designates work locations that require a Form-241; (2) verification by the RSO that the required forms have been filed; and (3) plans to apply for an NRC license which would relieve the company from the obligation to file for reciprocity when performing work in NRC jurisdictions. Although Testco appears to have submitted NRC Form-241's subsequent to identification of the violation by NRC, the NRC has determined that you should not be given credit for the factor of *Corrective Action*. This determination is based on the RSO's own admission of his failure to take corrective action prior to NRC involvement. Credit for corrective action is not warranted if a licensee does not take immediate corrective action to restore compliance upon learning of the violation. Therefore, the normal application of the Enforcement Policy would result in a civil penalty of \$10,000.

However, after considering the size of Testco and the effect that the Order against the President/RSO will have on Testco's operations, the NRC has decided to assess the base civil penalty of \$5,000. Therefore, to emphasize the importance of strict adherence to all regulatory requirements and that deliberate failures to comply with NRC regulations cannot be tolerated, I am issuing the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,000.

You are required to respond to this letter 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 you plan to prevent recurrence. Your response may reference or include previously docketed correspondence, if the correspondence adequately addressed the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC 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). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it is necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act 1980, Pub. L. No. 96-511.

Testco, Inc.

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If you have any questions regarding this letter, please contact
Mr. Charles M. Hosey, Chief, Nuclear Materials Inspection Section at
(404) 331-5614.

Sincerely,



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Docket No. 150-00032
General License (10 CFR 150.20)

Enclosure: Notice of Violation

cc w/encl: State of North Carolina

Testco, Inc.

Distribution w/encl:

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DCool, NMSS

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Enforcement Coordinators

RI, RIII, RIV

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NUDOCS

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Testco, Inc.
Greensboro, North Carolina

Docket No. 150-00032
License No. (General License)
EA 95-101

During an NRC inspection conducted on August 31 and September 6, 1994, and an Office of Investigations (OI) investigation concluded on April 25, 1995, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600 (60 FR 34381; June 30, 1995), the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty is set forth below:

10 CFR 30.3 requires in relevant part, that no person shall possess or use byproduct material except as authorized by a specific or general license issued by the NRC.

10 CFR 150.20(a) provides in part that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States shall, at least 3 days before engaging in such activity, file four copies of Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, between January 7, 1992 and January 22, 1994, Testco, Inc. performed radiography using Iridium-192 in Virginia, a non-Agreement State, at the following locations on the indicated dates without a specific license issued by the NRC and without filing any copies of Form-241 with the NRC:

1. Yorktown, on or about January 7 and 13, 1992;
2. Goochland, on or about March 20, 1992;
3. Lynchburg, on or about March 24, 1992;
4. Yorktown, on or about September 9 and 11, 1992;
5. Franklin, on or about February 4, 1993;
6. Boydton, on or about April 12, 1993;
7. Craney Island, on or about August 13 and 27, 1993; and
8. Hillsville, on or about January 22, 1994

This is a Severity Level III violation (Supplements VI and VII).
Civil Penalty - \$5,000

Pursuant to the provisions of 10 CFR 2.201, Testco, Inc. is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of

Notice of Violation

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this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted, and if denied, the reasons why; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken to avoid further violations; and (5) the date when full compliance will be achieved.

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 actions as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an Order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to:

Notice of Violation

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Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II, 101 Marietta Street, Atlanta, GA 30323.

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. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at Rockville, Maryland
this 31st day of October 1995