NUREG-0940
Vol. 16, No. 2, Part 3
Material Licensees

Enforcement Actions: Significant Actions Resolved Material Licensees

Semiannual Progress Report
July - December 1997

U.S. Nuclear Regulatory Commission

Office of Enforcement

RECEIVED
MAY 26 1998
OSTI

DISTRIBUTION OF THIS DOCUMENT IS UNLIMITED

MASTER

AVAILABILITY NOTICE

Availability of Reference Materials Cited in NRC Publications

Most documents cited in NRC publications will be available from one of the following sources:

1. The NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555-0001
2. The Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20402-9328
3. The National Technical Information Service, Springfield, VA 22161-0002

Although the listing that follows represents the majority of documents cited in NRC publications, it is not intended to be exhaustive.

Referenced documents available for inspection and copying for a fee from the NRC Public Document Room include NRC correspondence and internal NRC memoranda; NRC bulletins, circulars, information notices, inspection and investigation notices; licensee event reports; vendor reports and correspondence; Commission papers; and applicant and licensee documents and correspondence.

The following documents in the NUREG series are available for purchase from the Government Printing Office: formal NRC staff and contractor reports, NRC-sponsored conference proceedings, international agreement reports, grantee reports, and NRC booklets and brochures. Also available are regulatory guides, NRC regulations in the *Code of Federal Regulations*, and *Nuclear Regulatory Commission Issuances*.

Documents available from the National Technical Information Service include NUREG-series reports and technical reports prepared by other Federal agencies and reports prepared by the Atomic Energy Commission, forerunner agency to the Nuclear Regulatory Commission.

Documents available from public and special technical libraries include all open literature items, such as books, journal articles, and transactions. *Federal Register* notices, Federal and State legislation, and congressional reports can usually be obtained from these libraries.

Documents such as theses, dissertations, foreign reports and translations, and non-NRC conference proceedings are available for purchase from the organization sponsoring the publication cited.

Single copies of NRC draft reports are available free, to the extent of supply, upon written request to the Office of Administration, Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

Copies of industry codes and standards used in a substantive manner in the NRC regulatory process are maintained at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852-2738, for use by the public. Codes and standards are usually copyrighted and may be purchased from the originating organization or, if they are American National Standards, from the American National Standards Institute, 1430 Broadway, New York, NY 10018-3308.

NUREG-0940
Vol. 16, No. 2, Part 3
Material Licensees

Enforcement Actions: Significant Actions Resolved Material Licensees

Semiannual Progress Report
July - December 1997

Manuscript Completed: April 1998
Date Published: April 1998

**Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001**

DISCLAIMER

This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

ABSTRACT

This compilation summarizes significant enforcement actions that have been resolved during the period (July - December 1997) and includes copies of letters, Notices, and Orders sent by the Nuclear Regulatory Commission to material licensees with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC, so that actions can be taken to improve safety by avoiding future violations similar to those described in this publication

CONTENTS

	<u>Page</u>
ABSTRACT.....	iii
INTRODUCTION.....	1
SUMMARIES.....	3
MATERIAL LICENSEES	
A. <u>CIVIL PENALTIES AND ORDERS</u>	
Anheuser-Busch, Inc., St. Louis, Missouri EA 97-291.....	A-1
Apgee Corporation, Aliquippa, Pennsylvania EA 96-246.....	A-6
Capital Engineering Services, Inc., Dover, Delaware EA 97-202.....	A-19
Cartier, Inc., Shelton, Connecticut EA 97-145.....	A-29
Chemetron Corporation, Providence, Rhode Island EA 93-271.....	A-34
Department of Veterans Affairs Medical Center, Philadelphia, Pennsylvania EA 96-182.....	A-56
Envirocare of Utah, Inc., Salt Lake City, Utah EA 97-303.....	A-65
Grand View Hospital, Sellersville, Pennsylvania EA 97-309.....	A-73
Guam Environmental Protection Agency, Barrigada, Guam EA 97-122.....	A-80
Hagerstown Construction Services, Inc., Hagerstown, Maryland EA 97-193.....	A-87
H. H. Holmes Testing Laboratories, Inc., Wheeling, Illinois EA 97-237.....	A-100

HTP, Incorporated, Sharon, Pennsylvania EA 97-226.....	A-106
S. C. Johnson & Sons, Inc., Racine, Wisconsin EA 97-338.....	A-113
Mallinckrodt Medical, Inc., Maryland Heights, Missouri EA 97-155.....	A-119
Overlook Hospital, Summit, New Jersey EA 97-246.....	A-134
St. Mary's Hospital of Blue Springs, Blue Springs, Missouri EA 97-234.....	A-140
The Ohio State University, Columbus, Ohio EA 97-258.....	A-148
The Terracon Companies, Inc., Lenexa, Kansas EA 97-425.....	A-161
U.S. Army Tank-Automotive and Armaments Command, Rock Island, Illinois EA 97-350.....	A-167
Western Colorado Testing, Inc., Grand Junction, Colorado EA 96-459.....	A-181

B. SEVERITY LEVEL I, II, AND III VIOLATIONS, NO CIVIL PENALTY

Ambric Engineering, Inc., Philadelphia, Pennsylvania EA 97-357.....	B-1
Babcock and Wilcox Company, Vandergrift, Pennsylvania EA 97-378.....	B-5
Berwick Hospital, Berwick, Pennsylvania EA 97-360.....	B-11
Bittner Engineering, Inc., Escanaba, Michigan EA 97-512.....	B-14
J.C. Blair Memorial Hospital, Huntingdon, Pennsylvania EA 97-359.....	B-18

Bowser-Morner, Inc., Dayton, Ohio	
EA 97-391.....	B-21
B.P. Chemicals, Inc., Lima, Ohio	
EA 97-507.....	B-24
BWX Technologies, Lynchburg, Virginia	
EA 97-443.....	B-31
Centre Community Hospital, State College, Pennsylvania	
EA 97-284.....	B-38
Defense Logistics Agency, New Cumberland, Pennsylvania	
EA 97-465.....	B-42
Haines & Kibblehouse, Inc., Skippack, Pennsylvania	
EA 97-556.....	B-47
H&G Inspection Company, Inc., Houston, Texas	
EA 97-158.....	B-56
Hospital San Pablo, Bayamon, Puerto Rico	
EA 97-498.....	B-60
Indiana University Medical Center, Indianapolis, Indiana	
EA 97-503.....	B-65
Intergrated Industrial Systems, Inc., Yalesville, Connecticut	
EA 97-393.....	B-70
Jaworski Geotech, Inc., Manchester, New Hampshire	
EA 97-438.....	B-75
Law Engineering, Inc., Tulsa, Oklahoma	
EA 97-433.....	B-81
Michigan Department of Transportation, Lansing, Michigan	
EA 97-508.....	B-85
Mobile Dynamic Imaging, Inc., Englewood, New Jersey	
EA 97-500.....	B-89
Nuclear Imaging, Ltd., Sioux Falls, South Dakota	
EA 97-263.....	B-95

Pneumo Abex, Chicago, Illinois EA 97-285.....	B-98
Power Resources, Inc., Denver, Colorado EA 97-218.....	B-102
Professional Services Industries, Inc., Lombard, Illinois EA 97-373.....	B-108
Servicing Imaging Systems International, West Orange, New Jersey EA 97-540.....	B-115
St. Peter's Medical Center, New Brunswick, New Jersey EA 97-406.....	B-120
Soldiers and Sailors Memorial Hospital, Wellsboro, Pennsylvania EA 97-358.....	B-126
Union Electric Company, St. Louis, Missouri EA 97-480.....	B-129
University of South Dakota, School of Medicine, Vermillion, South Dakota EA 97-509.....	B-134
U.S. Enrichment Corporation, Bethesda, Maryland EA 97-267.....	B-140
Virginia Commonwealth University, Richmond, Virginia EA 97-417.....	B-151
Virginia Power Company, Chester, Virginia EA 97-419.....	B-156
Westinghouse-Electric Corporation, Pittsburgh, Pennsylvania EA 97-244.....	B-161
Windsor Services, Inc., Reading, Pennsylvania EA 97-596.....	B-170

ENFORCEMENT ACTIONS: SIGNIFICANT ACTIONS RESOLVED MATERIAL LICENSEES

July - December 1997

INTRODUCTION

This issue and Part of NUREG-0940 is being published to inform Nuclear Regulatory Commission (NRC) Material licensees about significant enforcement actions and their resolution for the second half of 1997. Enforcement actions are issued in accordance with the NRC's Enforcement Policy, published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions." Enforcement actions are issued by the Deputy Executive Director for Regulatory Effectiveness (DEDE), and the Regional Administrators. The Director, Office of Enforcement, may act for the DEDE in the absence of the DEDE or as directed. The NRC defines significant enforcement actions or escalated enforcement actions as civil penalties, orders, and Notices of Violation for violations categorized at Severity Level I, II, and III (where violations are categorized on a scale of I to IV, with I being the most significant).

The purpose of the NRC Enforcement Program is to support the agency's safety mission in protecting the public and the environment. Consistent with that purpose, the NRC makes this NUREG available to all materials licensees in the interest of avoiding similar significant noncompliance issues. Therefore, it is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by NRC.

A brief summary of each significant enforcement action that has been resolved in the second half of 1997 can be found in the section of this report entitled "Summaries." Each summary provides the enforcement action (EA) number to identify the case for reference purposes. The supplement number refers to the activity area in which the violations are classified in accordance with the Enforcement Policy.

Supplement I	- Reactor Operations
Supplement II	- Facility Construction
Supplement III	- Safeguards
Supplement IV	- Health Physics
Supplement V	- Transportation
Supplement VI	- Fuel Cycle and Materials Operations
Supplement VII	- Miscellaneous Matters
Supplement VIII	- Emergency Preparedness

Section A of this report consists of copies of completed civil penalty or Order actions involving materials licensees, arranged alphabetically. Section B includes copies of Notices of Violation that were issued to materials licensees for a Severity Level I, II, or III violation, but for which no civil penalties were assessed.

The NRC publishes significant enforcement actions taken against individuals and involving reactor licensees as Parts I and II of NUREG-0940, respectively.

SUMMARIES

A. CIVIL PENALTIES AND ORDERS

Anheuser-Busch, Inc., St. Louis, Missouri
Supplement VI, EA 97-291

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,750 was issued September 3, 1997, to emphasize the need to strictly control licensed material. The action was based on a violation involving unauthorized disposal of licensed material. Although a civil penalty would not have been issued under the normal assessment process, the NRC exercised enforcement discretion in accordance with Section VII.A.1 of the Enforcement Policy and issued a base civil penalty because the licensed material was not controlled and was found in the public domain. The licensee responded and paid the civil penalty on September 24, 1997.

Apgee Corporation, Alquippa, Pennsylvania
EA 96-246

A Confirmatory Order Modifying License issued June 26, 1997. The action was based on the findings of an NRC inspection which found that Apgee had distributed several different types of devices that did not conform to an NRC Sealed Source and Device Registry Certificate.

Capital Engineering Services, Inc., Dover, Delaware
EA 97-202

An Order Revoking License was issued May 15, 1997. The action was based on: (1) an unlicensed individual who was the president of Capital Engineering Services, deliberately violated the conditions of an order suspending the license by continuing to use moisture density gauges on numerous occasions, and (2) the licensee failed to test sealed sources for leakage and/or contamination.

Cartier, Inc., Shelton, CT
Supplement VI, EA 97-145

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued June 18, 1997, to emphasize the importance of conducting NRC activities only after receiving an NRC license, and adhering to the terms and conditions of that license. The action was based on a violation involving distribution of approximately 16,000 timepieces containing up to 4.6 millicuries of tritium without an NRC

license. The NRC exercised enforcement discretion in accordance with Section VII.A.1 of the Enforcement Policy, and proposed a civil penalty at three times the base amount. The licensee responded and paid the civil penalty on July 3, 1997.

Chemetron Corporation, Providence, Rhode Island
Supplement VI, EA 93-271

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$10,000 was issued May 11, 1994, to emphasize the licensee's responsibility of timely compliance with its decommissioning license conditions and for informing the NRC staff of expected delays in meeting license conditions. The action was based on the licensee's failure to submit a complete site remediation plan on time for two sites in Ohio as required by a license condition. The licensee responded in letters dated June 9 and September 9, 1994, and after careful consideration of the responses, and after the NRC approved a final disposal option, an Order Imposing the civil penalty was issued on July 28, 1997. The licensee and NRC issued a settlement order dated September 5, 1997, and the licensee paid \$5,000.

Department of Veterans Affairs Medical Center, Philadelphia, Pennsylvania
Supplement VII, EA 96-182

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$8,000 was issued September 18, 1997, to emphasize the unacceptability of discrimination against employees in retaliation for engaging in a protected activity and the importance of continuously assuring a work environment that is free of any harassment, intimidation or discrimination against those who raise safety concerns. The action was based on a violation involving discrimination of the licensee's radiation safety officer for raising safety concerns. The licensee responded on November 15, 1996, admitting the violation but requesting that the NRC reconsider the severity level of the violation, stating that the supervisor chastised the employee not just for telephoning the NRC but for failing to notify him of certain information of which she was aware. The licensee also stated that the chastisement was an isolated affair, and that other employees were not "chilled" by this event. After considering all the available information, including the results of the OI investigation, the NRC issued a letter on September 25, 1997. The letter reduced the severity level of the violation and exercised discretion that a civil penalty should not be issued.

Envirocare of Utah, Inc., Salt Lake City, Utah
EA 97-303

A Confirmatory Order was issued June 25, 1997. The action was based on NRC findings that Envirocare was in possession of special nuclear material in excess of the 350 gram limit specified in 10 CFR 150.10 and 150.11(a) as exempt from the requirements for an NRC license. The NRC inspection revealed that Envirocare had received more than 2,400 grams of uranium-235 that it had not disposed of.

Grand View Hospital, Sellersville, PA
Supplement V, EA 97-309

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$4,400 was issued August 13, 1997, to emphasize the importance of appropriate management and RSO oversight of the radiation safety program and the importance of ensuring that shipments containing radioactive material comply with regulatory requirements. The action was based on 1) the licensee's failure to ensure that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements, and 2) the shipment of Class 7 materials package, which had removable radioactive contaminants on the external surface of the package in excess of 270 times the allowable regulatory limits. The licensee responded and paid the civil penalty on September 9, 1997.

Guam Environmental Protection Agency, Barrigada, Guam
Supplement VI, EA 97-122

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,750 was issued September 11, 1997, to emphasize the importance of prompt and comprehensive correction of violations. The action was based on a violation involving the licensee's storage and use of a gas chromatograph unit and a violation involving the failure to maintain adequate security over licensed material, which was a repeat violation. The licensee responded in a letter dated August 5, 1997 requesting that their license be terminated and that they would transfer the device to an authorized recipient and on October 16, 1997, the NRC was notified that the device had been transferred to an authorized recipient. On November 4, 1997, a letter of Withdrawal of Proposed Civil Monetary Penalty was issued to the licensee.

Hagerstown Construction Services, Inc., Hagerstown, Maryland
Supplement VI, EA 97-193

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,750 was issued July 1, 1997, to emphasize the importance of conducting NRC activities only after adhering to appropriate reciprocity requirements, so that the NRC can verify that the activities are conducted safely and in accordance with requirements. The action was based on the failure to file Form-241 for work involving moisture density gauges performed under an Agreement State license in States where NRC has licensing authority. The company responded and requested that they be allowed to pay the civil penalty on time and the first payment was received October 1, 1997.

H. H. Holmes Testing Laboratories, Wheeling, IL
Supplement VI, EA 97-237

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,500 was issued August 22, 1997, to emphasize the importance of complying with NRC requirements and to ensure prompt identification of violations. The action was based on the company's willful failure to file an NRC Form-241. The company responded and paid the civil penalty on October 3, 1997.

HTP, Incorporated, Sharon, Pennsylvania
Supplement VI, EA 97-226

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,500 was issued June 18, 1997, to emphasize the unacceptability of willful violations and the need to comply with Commission regulations. The action was based on the company's continued possession of sealed sources even though the license expired in January 1995, and the company was required to complete decommissioning within 26 months of that date. The company responded in letters dated July 18 and August 5, 1997 indicating that the sources had been transferred to an authorized recipient. A letter was issued to the company on August 18, 1997 withdrawing the civil penalty.

S. C. Johnson & Sons, Inc., Racine, Wisconsin
Supplement IV, EA 97-338

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,500 was issued September 4, 1997, to emphasize the need to strictly control licensed material. The action was based on the loss of control of licensed material. Although normal application of the

Enforcement Policy would have resulted in no Civil Penalty being proposed, the NRC exercised enforcement discretion in accordance with Section VII.A.1 of the Enforcement Policy and issued a civil penalty in the base amount because control over the licensed material was lost and it is believed to be in a landfill in the public domain. The licensee responded and paid the civil penalty on September 17, 1997.

Mallinckrodt Medical, Inc., Maryland Heights, Missouri
Supplement V, EA 97-155

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$13,750 was issued May 30, 1997, to emphasize the importance of control of licensed materials and comprehensive correction of violations. The action was based on a violation involving shipment of a Mo-99/Tc-99m generator for medical use where the radiation level at the surface of the package exceeded 200 millirems. The licensee responded in a letter dated June 30, 1997 agreeing that the violation occurred, but requesting a smaller civil penalty. After consideration of the licensee's response, an Order Imposing Civil Monetary Penalty in the amount of \$13,750 was issued September 9, 1997. The licensee paid the civil penalty on September 30, 1997.

Overlook Hospital, Summit, New Jersey
Supplement VI, EA 97-246

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,750 was issued August 21, 1997, to emphasize appropriate attention to the licensee's program, in particular, conformance to the Quality Management Program (QMP) to preclude misadministrations at the licensee's facility. The action was based on 1) failure to prepare a written directive prior to administering iodine-131 as sodium iodide to a patient, and 2) failure to instruct an individual in the licensee's medical quality management program. The licensee responded and paid the civil penalty on September 16, 1997.

St. Mary's Hospital of Blue Springs, Blue Springs, Missouri
Supplements IV and VI, EA 97-234

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,500 was issued July 23, 1997, to emphasize that licensees must maintain control over licensed activities, especially on weekends when there may be less management presence. The action was based on, among other violations, a nuclear medicine technologist failing to perform certain NRC-required tests and procedures through complacency

and careless disregard, rather than through mistake or error. The licensee responded and paid the civil penalty on August 6, 1997.

The Ohio State University, Columbus, Ohio
Supplements IV and VI, EA 97-258

A Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$13,000 and Demand for Information (DFI) was issued October 23, 1997, to emphasize the need for senior licensee management to provide sufficient oversight, direction, and resources to assure that Commission requirements are met, the unacceptability of violations that represent careless disregard of NRC requirements, and the need for prompt and comprehensive correction of violations. The actions were based on a problem involving willful violations of inventory and waste storage requirements that occurred due to lack of adequate resources and two problems involving reporting requirements and failure to secure licensed material. The DFI was issued to obtain further assurance that the licensee's corrective measures will be long-lasting. The licensee responded and paid the civil penalties on December 17, 1997.

The Terracon Companies, Inc., Lenexa, Kansas
Supplement VI, EA 97-425

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,000 was issued November 17, 1997, to emphasize the importance of strict compliance with licensed commitments and requirements, and the unacceptability of willful noncompliance. The action was based on a violation involving a deliberate failure to assure that gauge operators received a manufacturer's safety/training course, as committed to in the company's license application. The licensee responded and paid the civil penalty on December 8, 1997.

U.S. Army Tank-Automotive and Armaments Command, Rock Island, Illinois
Supplements IV and VI, EA 97-350

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$16,000 was issued November 12, 1997, to emphasize the importance of lasting and effective corrective action. The action was based on violations involving failures to: (1) properly store licensed material, conduct annual inspections and inventories, provide training, conduct tests by persons authorized to do so, conduct surveys, and perform maintenance in accordance with procedures, and (2) provide notifications to the NRC. The licensee responded and paid the civil penalty on November 21, 1997.

Western Colorado Testing, Inc., Grand Junction, Colorado
Supplement VI, EA 96-459

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,500 was issued June 13, 1997, to emphasize the need for Western Colorado Testing's management and RSO to assure that the company is meeting regulatory requirements. The action was based on a violation involving a willful failure to file for reciprocity prior to conducting licensed activities in non-Agreement States. The company responded on July 16, 1997, requesting mitigation of the severity level and the civil penalty. After consideration of the company's response, an Order Imposing Civil Monetary Penalty in the amount of \$2,500 was issued October 28, 1997. The company paid the civil penalty on November 14, 1997.

B. SEVERITY LEVEL I, II, AND III VIOLATIONS. NO CIVIL PENALTY

Ambric Engineering, Inc., Philadelphia, Pennsylvania
Supplement IV, EA 97-357

A Notice of Violation was issued August 22, 1997. The action was based on the failure to maintain security of the source after it broke off its rod while being retracted into the gauge assembly on June 25, 1997. The source remained in the ground at the temporary jobsite unbeknownst to the gauge operator until it was found on July 14, 1997. A civil penalty was not issued because the licensee has not been the subject of an escalated enforcement action within the last two inspections and credit was given for prompt and comprehensive corrective actions.

Babcock and Wilcox Company, Vandergrift, Pennsylvania
Supplement VI, EA 97-378

A Notice of Violation was issued September 4, 1997. The violations involved: (1) failure to implement ALARA practices to evaluate the licensee's decontamination methods prior to implementation, as required by the Decommissioning Plan, (2) failure to use engineering controls to limit the airborne concentrations of radioactive material and prevent the spread of contamination, and (3) failure to adequately monitor the concentrations of airborne activity in the vicinity of workers. A civil penalty was not issued because the facility has not been the subject of an escalated enforcement action in the last two years and credit was given for prompt and comprehensive corrective actions.

Berwick Hospital, Berwick, Pennsylvania
Supplement IV, EA 97-360

A Notice of Violation was issued September 25, 1997. The action was based on failure to secure licensed materials in the licensee's Hot Lab, an unrestricted area. A civil penalty was not issued because the licensee had not been the subject of an escalated enforcement action in the last two years and credit was given for prompt and comprehensive corrective actions.

Bittner Engineering, Inc., Escanaba, Michigan
Supplement VI, EA 97-512

A Notice of Violation was issued November 24, 1997. The violation involved the failure to control licensed material in an unrestricted area. As a result, a gauge containing 8 millicuries of cesium-137 and 40 millicuries of americium-241 was run over by construction machinery and damaged. A civil penalty was not issued because the licensee had not been the subject of an escalated enforcement action in the last two years and credit was given for prompt and comprehensive corrective actions.

J. C. Blair Memorial Hospital, Huntingdon, Pennsylvania
Supplement IV, EA 97-359

A Notice of Violation was issued September 25, 1997. The violation involved failure to secure licensed materials in the licensee's Nuclear Medicine hot lab, an unrestricted area. A civil penalty was not issued because the licensee had not been the subject of escalated enforcement actions in the last two years and credit was given for prompt and comprehensive corrective action.

Bowser-Morner, Inc., Dayton, Ohio
Supplement IV, EA 97-391

A Notice of Violation was issued October 8, 1997. The violation involved the failure to secure or maintain constant surveillance over a gauge. The source rod was damaged when the device was run over by construction equipment. A civil penalty was not issued because the licensee had not been the subject of escalated enforcement actions in the last two years and credit was given for corrective actions.

B. P. Chemicals, Inc., Lima, Ohio
Supplement VI, EA 97-507

A Notice of Violation was issued December 16, 1997. The violations involved failure to fully implement the QA/QC plan as required by the license conditions and requirements. Based on the CAL issued on August 29, 1997, the licensee temporarily halted the Pond Closure Project because of concerns that sludge mixing, sampling, laboratory analyses, and recordkeeping were not adequate to ensure that the onsite disposal cell met NRC radiological criteria. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years and credit was given for corrective action
S.

BWX Technologies, Lynchburg, Virginia
Supplement VI, EA 97-443

A Notice of Violation was issued November 28, 1997. The violations involved (1) the failure to comply with criticality safety limits specified for an accountability transfer cart in three or four storage locations, (2) the use of unapproved instructions for handling metallurgical mounts containing U-235, and (3) the failure to follow procedures and discontinue operations when personnel determined that processing activities for the metallurgical mounts were not addressed by procedure. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years and credit was given for corrective actions.

Centre Community Hospital, State College, Pennsylvania
Supplement V, EA 97-284

A Notice of Violation was issued July 8, 1997. The violation involved the use of iridium-192 in a High Dose Rate afterloader for surface treatment of skin cancer without the licensee's NRC license authorizing such use. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years and credit was given for prompt and comprehensive corrective actions.

Defense Logistics Agency, New Cumberland, Pennsylvania
Supplement IV, EA 97-465

A Notice of Violation was issued October 31, 1997. The violation involved the failure to maintain security of tritium sources. As a result of the failure to maintain security, an individual employee, who was not involved in NRC-licensed activities, was able to gain access to the seven tritium sources and take them to his residence. A civil

penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years and credit was given for prompt and comprehensive corrective actions.

Haines and Kibblehouse, Inc., Skippack, Pennsylvania
Supplements IV and VI, EA 97-556

A Notice of Violation was issued December 22, 1997. The violations involved: (1) failure to maintain security over byproduct materials, and (2) inadequate management control of the licensee's program. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years and credit was given for prompt and comprehensive corrective actions.

H & G Inspection Company, Inc., Houston, Texas
Supplement IV, EA 97-158

A Notice of Violation was issued July 1, 1997. The violation involved the licensee's failure to limit the occupational radiation exposure of a radiographer's assistant within NRC limits in 10 CFR 20.1201(a)(1)(i). A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years and credit was given for prompt and comprehensive corrective actions.

Hospital San Pablo, Bayamon, Puerto Rico
Supplements IV and VI, EA 97-498

A Notice of Violation was issued December 23, 1997. The violations involved: (1) the failure to secure licensed materials from unauthorized removal, (2) unauthorized disposal of the licensed materials, and (3) the failure to monitor, with a radiation survey meter, radioactive waste held for decay-in-storage prior to disposing of it. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years and the licensee took corrective actions.

Indiana University Medical Center, Indianapolis, Indiana
Supplement VI, EA 97-503

A Notice of Violation was issued December 19, 1997. The violation involved three separate episodes of deliberate incorrect dating of monthly survey records by laboratory personnel. A civil penalty was not proposed because the licensee identified each instance of record falsification in a timely manner and promptly implemented corrective actions.

Intergrated Industrial Systems, Inc., Yalesville, Connecticut
Supplement VI, EA 97-393

A Notice of Violation was issued November 7, 1997. The violations involved: (1) manufacturing and distribution of certain nuclear gauges in a manner that was not in accordance with the registration certificate, (2) making modifications to the devices, without the required approval by the Technical Director, (3) failure to maintain records of test results of the devices, (4) approval of a nonconforming part as acceptable for use, without the Production Manager, Technical Director, and the assigned Engineer indicating their approval, as required, and (5) the failure to perform required annual audits. A civil penalty was not proposed because the licensee had not been the subject of an escalated enforcement action in the last two years, and credit was given for prompt and comprehensive corrective actions.

Jaworski Geotech, Inc., Manchester, New Hampshire.
Supplement IV, EA 97-438

A Notice of Violation was issued September 25, 1997. The violation involved: (1) the failure to control and maintain constant surveillance of licensed material not in storage in an unrestricted area at the temporary jobsite. The failure contributed to the gauge, which contained 9 millicuries of cesium-137 and 50 millicuries of americium-241f, apparently being stolen from the temporary jobsite. Specifically, the technician who was using the gauge for compaction measurements at the jobsite, left the gauge unattended for approximately 30 minutes to examine work to be conducted in a ditch. A civil penalty was not proposed because the licensee had not been the subject of an escalated enforcement action in the last two years, and credit was given for prompt and comprehensive corrective actions.

Law Engineering, Inc., Tulsa, Oklahoma
Supplement VI, EA 97-433

A Notice of Violation was issued November 17, 1997. The violation involved a gauge user inadvertently leaving a portable gauge at a construction site with the source rod still in the extended position. The gauge was out of the licensee's control for approximately 5 hours. A contractor at the construction site picked the gauge up by its carrying handle, which automatically returned the source rod to its shielded position, and transported the gauge to his home where it was picked up by the licensee. A civil penalty was not proposed because the licensee had not been the subject of an escalated enforcement action in

the last two years, and credit was given for prompt and comprehensive corrective actions.

Michigan Department of Transportation, Lansing, Michigan
Supplement IV, EA 97-508

A Notice of Violation was issued December 5, 1997. The violation involved the failure to control and maintain constant surveillance of gauges containing licensed material. In one case, the gauge operator placed a gauge in front of his vehicle, forgot it was there, and proceeded to run it over, causing damage. In another case, a gauge was damaged when it was run over by construction equipment while the operator was otherwise occupied. A civil penalty was not proposed because the licensee had not been the subject of an escalated enforcement action in the last two years, and credit was given for prompt and comprehensive corrective actions.

Mobile Dynamic Imaging, Inc., Englewood, New Jersey
Supplement VI, EA 97-500

A Notice of Violation was issued December 31, 1997 for violations indicative of a breakdown in control of licensed activities, including failure of the RSO to establish and implement written policies and procedures to ensure that radiation safety activities were performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program. A civil penalty was not proposed because the licensee had not been the subject of an escalated enforcement action in the last two years, and credit was given for prompt and comprehensive corrective actions. In a Confirmatory Action Letter, dated December 4, 1997, the licensee committed to not resume activities under the license until a consultant was retained.

Nuclear Imaging, Ltd., Sioux Falls, South Dakota
Supplement IV, EA 97-263

A Notice of Violation was issued July 31, 1997. The violation involved the failure to secure or keep under constant surveillance and immediate control all byproduct material when in transit. Specifically, a shipping package containing approximately 300 millicuries of technetium-99m was placed in a vehicle compartment for transport. The package was not locked or otherwise secured and this resulted in the package falling from the vehicle during transit. A civil penalty was not proposed because the licensee had not been the subject of an escalated

enforcement action in the last two years, and credit was given for prompt and comprehensive corrective action.

Pneumo Abex (Abex Corporation), Chicago, Illinois
Supplement VI, EA 97-285

A Notice of Violation was issued September 10, 1997. The violation involved the company's failure to provide the buyer's of their building a copy of the NRC regulations applicable to the possession of "EXIT" signs. Three of the signs were removed by teenagers and taken to one of their homes when the building was being demolished. One of the signs was broken which resulted in contamination to the teenager and his friends, as well as the home of the teenager. A civil penalty was not issued because the statute of limitations had expired.

Power Resources, Inc., Denver, Colorado
Supplement VI, EA 97-218

A Notice of Violation was issued July 29, 1997. The violations involved (1) a failure to adequately monitor occupational exposure to radon progeny, (2) the failure to post areas as airborne radioactivity areas, (3) the failure to establish any environmental monitoring procedures as required by the license, (4) the failure to report the results of two water samples to the NRC in the semiannual effluent reports for 1996, (5) the failure to provide the NRC with accurate and complete semiannual environmental and effluent monitoring reports, and (6) the failure to submit an annual update of the licensee's surety amount within the designated timeframe as specified by License Condition 9.5. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action within the last two years, and credit was given for corrective actions.

Professional Services Industries, Inc., Lombard, Illinois
Supplement VI, EA 97-373

A Notice of Violation was issued November 5, 1997. The violations included failure to directly supervise an assistant radiographer performing radiographic operations within a fixed facility on the licensee's premises, unauthorized use of a radiography device on one occasion by a trainee, and failure to provide a film badge to the trainee during that use. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the past two years, and credit was given for prompt and comprehensive corrective actions.

Servicing Imaging Systems International, West Orange, New Jersey
Supplement VI, EA 97-540

A Notice of Violation was issued December 31, 1997 for violations indicative of a breakdown in control of licensed activities, including: (1) failure to perform daily surveys, (2) failure to perform a linearity check of the dose calibrator, (3) failure to provide a personnel finger monitor to an individual, (4) failure to perform leak tests and inventories of sealed sources, and (5) failure to perform an annual review of the radiation protection program. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years, and credit was given for prompt and comprehensive corrective actions.

St. Peter's Medical Center, New Brunswick, New Jersey
Supplement IV, EA 97-406

A Notice of Violation was issued September 25, 1997. The violations involved (1) failure to maintain control of licensed material, specifically, a cesium-137 source which was inadvertently taken by a contract physicist to another hospital in New Jersey and (2) failure to immediately report to the NRC Operations Center that the radioactive source was lost, transported through unrestricted areas, and discovered at another hospital. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years, and credit was given for prompt and comprehensive corrective actions.

Soldiers and Sailors Memorial Hospital, Wellsboro, Pennsylvania
Supplement IV, EA 97-358

A Notice of Violation was issued September 25, 1997. The violation involved the failure to secure licensed materials in the licensee's Nuclear Materials prep room/hot lab, an unrestricted area. A civil penalty was not proposed because the licensee had not been the subject of escalated enforcement action in the last two years, and credit was given for prompt and comprehensive corrective actions.

Union Electric Company, St. Louis, Missouri
Supplements IV and VI, EA 97-480

A Notice of Violation was issued October 28, 1997. The violations involved (1) removal of licensed material by unauthorized individuals and (2) failure to secure licensed material from unauthorized removal. A civil penalty was not proposed because the licensee had not been the

subject of escalated enforcement action in the last two years, and credit was given for corrective actions.

University of South Dakota, Vermillion, South Dakota
Supplement VI, EA 97-509

A Notice of Violation was issued December 22, 1997 for violations indicative of a breakdown in control of licensed activities, including failure to: (1) secure radioactive materials against unauthorized removal; (2) conduct quarterly radiation safety program reviews with the University president; and (3) assure, through the appointed radiation safety officer, that activities were being conducted in accordance with all requirements. A civil penalty was not proposed because the licensee had not been subject of escalated enforcement action in the last two years, and credit was given for corrective actions.

U.S. Enrichment Corporation, Bethesda, Maryland
Supplement III, EA 97-267

A Notice of Violation was issued September 22, 1997. The violations involved (1) the licensee's failure to provide the Commission with complete and accurate information, and (2) implement various aspects of the Security Plan of the Plant. A civil penalty was not proposed because the facility had not been the subject of escalated enforcement action since certification, and credit was given for prompt and comprehensive corrective actions.

Virginia Commonwealth University, Richmond, Virginia
Supplement VI, EA 97-417

A Notice of Violation was issued October 28, 1997. The violation involved two examples of the failure to secure licensed materials against unauthorized removal or access. A civil penalty was not proposed because the facility had not been the subject of escalated enforcement action in the past two years, and credit was given for corrective actions.

Virginia Power Company, Chester, Virginia
Supplement VI, EA 97-419

A Notice of Violation was issued October 29, 1997. The violation involved the unauthorized removal of a generally licensed fixed gauge containing 72 millicuries of cesium 137 from its permanent mounting to a fly ash hopper. The gauge was removed by a contract worker who was neither trained nor licensed to perform such activities. A civil

penalty was not proposed because the facility had not been the subject of escalated enforcement action in the past two years, and credit was given for corrective actions.

Westinghouse Electric Corporation, Pittsburgh, Pennsylvania
Supplement VI, EA 97-244

A Notice of Violation was issued July 28, 1997. The violations involved the licensee's failure to (1) implement proper notification procedures of the event to the NRC, (2) provide adequate training for certain employees that handled SNM, provide adequate procedures for handling and testing of lead-filled rods, (4) comply with numerous DOT requirements, and (5) adequately implement the licensee's material control and accounting program. A civil penalty was not proposed because the facility had not been the subject of escalated enforcement action in the past two years, and credit was given for prompt and comprehensive corrective action.

Windsor Services, Inc., Reading, Pennsylvania
Supplement VI, EA 97-596

A Notice of Violation was issued December 22, 1997. The violations involved the licensee's failure to (1) notify the NRC, and secure NRC consent in writing, prior to a change in ownership which transferred control of the license to the new owners from the previous owners, (2) obtain a license amendment prior to using a new RSO, (3) perform a review of the radiation safety program content and implementation, and (4) provide annual refresher training to gauge users. A civil penalty was not proposed because the facility had not been the subject of escalated enforcement action in the past two years, and credit was given for prompt and comprehensive corrective action.

A. CIVIL PENALTIES AND ORDERS

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

September 3, 1997

EA 97-291

Mr. John Nevin, Plant Manager
Anheuser-Busch, Inc.
One Busch Place
St. Louis, MO 63118-1852

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY
- \$2,750 (NRC INSPECTION REPORT NO. 999-90003/97006(DNMS))**

Dear Mr. Nevin:

This refers to the special safety inspection conducted from May 16 through June 23, 1997, at Anheuser-Busch, Inc. (ABI) in St. Louis, Missouri to review the circumstances surrounding the disposal of two industrial gauging devices which contained 100 millicuries (3.7 GBq) of americium-241 in sealed form and the resultant loss of one source. The details of the incident are discussed in NRC Inspection Report No. 999-90003/97006(DNMS), dated June 27, 1997. By letter dated July 24, 1997, ABI responded to the apparent violations described in the inspection report and did not request a predecisional enforcement conference.

Based on the information developed during the inspection and the information that ABI provided in response to the inspection report, the NRC has determined that violations of NRC requirements occurred. The violations involving the failure to properly transfer or dispose of generally licensed material and unauthorized dismantling of devices containing licensed material are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty.

Incumbent upon each company possessing byproduct material is the responsibility to protect public health and safety by ensuring that radioactive materials are controlled at all times. These violations are of significant regulatory concern because ABI personnel overlooked tags attached to the devices which specified that removal from service was to be performed only by authorized individuals. Furthermore, the failure to effectively control material is a significant safety concern because it can lead to the inadvertent release of radioactive material to the public domain. The violation represents a failure to control access to licensed materials for radiation purposes and is categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit was warranted in that your actions were prompt and comprehensive. The NRC recognizes that application of the civil penalty assessment process would normally not result in a civil penalty in this case. Nevertheless, the NRC is exercising discretion in accordance with Section VII.A.1(g) of the Enforcement Policy and is proposing a civil penalty of \$2,750. Discretion is being exercised because licensed material was not controlled and was released to the public domain.

Therefore, to emphasize the need to strictly control licensed material, 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 \$2,750 for the Severity Level III violation.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in an ABI letter dated July 24, 1997. Therefore, you are not required to provide any additional statement or explanation pursuant to 10 CFR 2.201 unless the description already provided does not accurately reflect your corrective actions or your position. You are required to respond to the proposed civil penalty pursuant to 10 CFR 2.205 and for that response, you should follow the directions 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). 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 a redaction.

Sincerely,

A. Bill Beach
Regional Administrator

Docket No. 999-90003
General License

Enclosure: Notice of Violation and
Proposed Imposition
of Civil Penalty

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Anheuser-Busch, Inc.
St. Louis, Missouri

Docket No. 999-90003
General License
EA 97-291

During an NRC inspection conducted from May 16 through June 23, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, 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 violations and associated civil penalty are set forth below:

- A. 10 CFR 31.5(c)(8) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall, except as provided in 10 CFR 31.5(c)(9), transfer or dispose of the device containing byproduct material only by transfer to persons holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to receive the device.

Contrary to the above, on or about May 2, 1997, the licensee disposed of two Peco Promax 1000 gauges each containing a 100 millicurie (3.7 Gbq) americium-241 sealed source and this disposal was not made by transfer to a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or to an Agreement State licensee, and the exceptions in 10 CFR 31.5(c)(9) did not apply. Specifically, two devices were disposed of in an unlicensed scrap metal processing facility. (01013)

- B. 10 CFR 31.5(c)(1) requires that any person who acquires, receives, possesses, uses, or transfers byproduct material in a device pursuant to a general license shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by such labels. The instructions and precautions provided by the label affixed to the Peco Promax 1000 gauge containing 100 millicuries (3.7 Gbq) of americium-241 specifically stated that removal of the labels is prohibited and that dismantling of the devices shall be performed by persons specifically licensed by the Nuclear Regulatory Commission.

Contrary to the above, on or about May 2, 1997, the licensee did not comply with all instructions and precautions provided on the label affixed to the devices in that the licensee dismantled two devices, located on Line 36, and dismantling was done by persons not specifically licensed by the Nuclear Regulatory Commission. (01023)

These violations represent a Severity Level III problem (Supplement VI).
Civil Penalty - \$2,750.

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 and the date when full compliance was achieved is already adequately addressed on the docket in an ABI letter dated July 24, 1997. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, within 30 days of the date of the letter transmitting this Notice of Violation.

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 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 violation 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: 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 III, 801 Warrenville Road, Lisle, IL 60532-4351.

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 a 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 Lisle, Illinois
this 3rd day of September 1997

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

June 26, 1997

EA 96-246

Mr. G. M. (Bud) Smith
President
Apgee Corporation
103 Corporation Drive
Aliquippa, Pennsylvania 15001

SUBJECT: CONFIRMATORY ORDER MODIFYING LICENSE (EFFECTIVE IMMEDIATELY)

Dear Mr. Smith:

The enclosed Confirmatory Order Modifying License (Effective Immediately) is being issued to confirm commitments you made at a predecisional enforcement conference conducted in the Region I office on April 24, 1997, and during a subsequent telephone conversation on May 1, 1997. These commitments were identified in our letter to you dated May 8, 1997. The Order requires that you either: (1) bring certain devices that you have distributed or that remain in your possession, which are not in compliance with a Sealed Source and Device (SSD) Registry Certificate, into compliance by obtaining an amendment to your registry certificates and taking whatever actions might be necessary to bring the nonconforming devices into compliance with the amended registry certificates; (2) recall the devices; or (3) bring the devices into compliance with the current SSD registry certificates. The Order also requires you to provide the NRC with: (1) a schedule for your quarterly audits; (2) written reports of the results of the audits; and (3) monthly reports describing the status of all the actions required by this Order.

In your letter dated May 19, 1997, responding to our May 8 letter, you agreed to the issuance of the enclosed Order. During a telephone conversation on May 29, 1997, you agreed to the commitment dates regarding the LB 300 IPD/L devices and LB AS devices, identified in paragraphs "C" and "E", respectively, of the Order. In recognition of the fact that you have already completed certain actions which were included in our May 8 letter (i.e.; you submitted a request to amend the SSD registry certificates identified in paragraphs "A", "D" and "F" regarding LB 7400 devices, LB 300 IPD/L devices, and LB 330 Belt Scale devices, respectively; and you completed distribution of the replacement bolts identified in paragraph "B" regarding LB 7400 devices with carbon steel transfer bolts), your commitments to complete these actions are not reflected in the Order.

The NRC has assigned a high priority to its review of your request to amend the SSD registry certificates in order to ensure that you are able to complete your commitments contained in the Order within seven months. To expedite the review, you need to promptly respond to any questions you receive regarding your amendments. You are reminded, however, that if your amended SSD registry

certificates are not issued in the near future, you must still comply with the Order by either (1) recalling any nonconforming devices, or (2) bringing any nonconforming devices into compliance with the current SSD registry certificates.

At the predecisional enforcement conference, you also agreed to provide the NRC certain information on those gauges for which NRC analysis had determined that the information was insufficient. Following review of this additional information, the conditions of the Order may need to be modified, in which case the NRC will contact you prior to issuance of a Modified Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order also may subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR).

Sincerely,

James Lieberman, Director
Office of Enforcement

Docket No. 030-32518
License No. 37-28697-01

Enclosure: As Stated

cc w/encl:
Commonwealth of Pennsylvania

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 030-32518
APGEE CORPORATION	)	License No. 37-28697-01
Aliquippa, Pennsylvania	)	EA 96-246

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Apgee Corporation (Licensee) is the holder of NRC License No. 37-28697-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license was initially issued on September 30, 1991, and is due to expire on October 31, 2001. The license authorizes the possession and use of a variety of radionuclides incident to the loading of sealed sources into devices prior to transfer. These devices are described in Sealed Source and Device (SSD) Registry Certificates, NR-0112-D-101-B, NR-0112-D-102-B, NR-0112-D-104-B, NR-0112-D-105-S, NR-0112-D-106-B, NR-0112-D-107-S, NR-0112-D-108-B, NR-0112-D-109-B, NR-0112-D-110-B, NR-0112-D-111-S, and NR-0112-D-112-B issued by the NRC pursuant to 10 CFR Part 32. The Licensee imports devices manufactured by EG&G Berthold in Germany, performs quality assurance checks, and transfers the devices to Berthold Systems, Inc. for distribution within the U.S. to specific and general licensees. Most of the SSD Registration Certificates referenced above were originally issued on October 18, 1991. Registration Certificate NR-0112-102-B was issued on April 26, 1996, Registration Certificate NR-0112-106-B was issued on October 1, 1992, and Registration Certificate NR-0112-D-109-B was issued on February 16, 1994. Registration Certificates have no expiration date.

On June 11-13, 1996, during an inspection of Apgee Corporation and Berthold Systems, Inc., at their Aliquippa, Pennsylvania facility, certain apparent violations involving improper distribution of sources and devices were identified, as described in Inspection Report Nos. 030-20043/96-001, 030-21228/96-001 and 030-32518/96-001. As a result, a Confirmatory Action Letter (CAL) was issued to the Licensee on June 19, 1996, requiring the Licensee to perform a comprehensive audit of every device and its contained source currently being distributed and distributed in the past. In its response to the CAL dated July 19, 1996, the Licensee confirmed that some of the devices manufactured by EG&G Berthold and distributed by the Licensee may have deviated from the SSD Certificates of Registration.

On July 22, 1996, the NRC issued a supplement to the CAL . The Licensee submitted further responses to the CAL and Supplement by letters dated August 12, and October 15, 1996. By letter dated October 28, 1996, the NRC requested that the Licensee provide additional information in order that the Commission could complete its assessment of the safety significance of the identified deviations. This information was submitted by the Licensee on November 27, December 4, and December 20, 1996.

By letter dated April 2, 1997, the NRC informed the Licensee that it had completed its analysis of the information submitted by the Licensee. The

letter informed the Licensee that, based upon the results of the inspection and the NRC's review of the information provided, three apparent violations were identified, including: (1) distribution of devices not in accordance with the conditions of the registration certificate or for which a certificate of registration had not been issued; (2) failure to conduct audits on a quarterly basis; and (3) failure to distribute model LB 7400 series devices with manuals that include written instructions advising the customer not to lock the device in the open position.

In an enclosure to its April 2, 1997 letter, the NRC identified 42 areas of concern regarding 11 types of devices and a number of areas for which additional information was still required. The NRC expressed safety concerns in its April 2, 1997, letter regarding the following devices, which were apparently distributed without conforming to the requirements of the applicable registration certificate: (1) LB 7400 devices with alternate sources; (2) LB 7400 devices with pneumatic actuator; (3) LB 7400 devices with carbon steel transport bolts; (4) LB 300 IPD/L devices with modified source housing lengths; (5) LB 300 IPD/L devices with new Amersham or Bebig sources; and (6) all LB AS devices.

A predecisional enforcement conference was conducted with the Licensee at the NRC Region I office on April 24, 1997, to discuss the apparent violations and the concerns identified in the NRC analysis. During the enforcement conference, the Licensee indicated that organizational weaknesses in its program led to the problems. The Licensee also acknowledged that audits of the manufacturing process performed by the Licensee were not thorough.

With regard to the six issues of particular safety concern to the NRC, the Licensee indicated that it planned to either: (1) submit a request to amend certain SSD Registry Certificates to address changes to the devices; (2) verify that certain devices are in compliance with the current Registry Certificates; and/or (3) bring the devices into compliance with the current Registry Certificates. In the case of the LB 7400 with pneumatic actuator, the only device in the field had already been modified to comply with the Registry Certificate. The Licensee also indicated that there were no immediate safety concerns with any of the devices that were currently in the field. In addition, the Licensee agreed to provide the NRC information on those gauges where NRC analysis had determined that the information was insufficient.

III

By letter dated May 8, 1997, the NRC documented its understanding of the commitments agreed to by the licensee. The letter informed the Licensee that the NRC had determined that public health and safety required these commitments be confirmed by a Confirmatory Order Modifying License (Order), and that these commitments would be incorporated into an Order following the Licensee's written consent to them. The letter also informed the Licensee that if it consented to the issuance of this Order, it would be waiving its right to request a hearing on all or any part of the Order, and the letter requested the Licensee to sign a Hearing Waiver indicating that it agreed to

such commitments and consented to the issuance of this Order. On May 19, 1997, the licensee consented to issuing this Order with the commitments, as described in Section IV below, by signing a Hearing Waiver. On May 29, 1997, in a telephone conversation between John McGrath, USNRC Region I, and G. M. Smith; Apgee Corporation, at NRC's request, agreed to an extension of the dates for the commitments identified in paragraphs "C" and "E" of this Order. Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to the Licensee's quality assurance program, and that distributed devices will comply with their SSD Registry Certificate and NRC requirements.

I find that the Licensee's commitments as set forth in Section IV of this Order are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above, and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. 37-28697-01 IS MODIFIED AS FOLLOWS:

- A. With respect to the LB 7400 devices with alternative sources, within seven months of the date of this Order, Apgee shall:
1. if an amended SSD Registry Certificate is issued to allow for the longer source capsules, complete the replacement of the source holders in the devices to conform to the amended Registry Certificate; or
 2. recall the devices; or
 3. bring the devices into compliance with the current SSD Registry Certificate.
- B. With respect to the LB 7400 devices with carbon steel transport bolts, within seven months of the date of this Order, Apgee shall obtain confirmation (e.g., written, telephone, visual verification, etc.) that all possessors/users of the gauges have replaced the non-galvanized bolts with the supplied/authorized galvanized replacement bolts as instructed.
- C. With respect to the LB 300 IPD/L devices with modified source housing lengths, shield diameters and other changes previously identified by Apgee, by July 31, 1997, Apgee shall:

1. complete a field inspection of all generally licensed gauges; and
 2. notify the NRC immediately of any identified deviations from the SSD Registry Certificate.
- D. With respect to the LB 300 IPD/L devices with new Amersham or Bebig sources, within seven months of the date of this Order, Apgee shall:
1. if an amended SSD Registry Certificate is issued to allow for the new sources and any other changes to the device that have been identified as not being in accordance with the Registry Certificate, complete any actions needed to ensure the devices conform to the amended Registry Certificate; or
 2. recall the devices; or
 3. bring the devices into compliance with the current SSD Registry Certificate.
- E. With respect to the LB AS devices, Apgee shall:
1. by July 31, 1997, recall the devices; or

2. by June 30, 1997, provide the NRC with technical justification as to the safety of the devices and as to why they should remain in the public domain. If the NRC determines that the technical justification is inadequate, Apgee shall recall all devices within 15 days of the NRC's notification or by July 31, 1997, whichever is the later date.
- F. With respect to the LB 330 Belt Scale devices with increased diameter of the source capsule and spacers in the source rod, within seven months of the date of this Order, Apgee shall:
1. if an amended SSD Registry Certificate is issued to allow for the 7mm diameter source and spacers and other changes to the devices, complete any actions needed to ensure the devices conform to the amended Registry Certificate; or
 2. recall the devices; or
 3. bring the devices into compliance with the current SSD Registry Certificate.
- G. Apgee shall provide, in writing, the following information to the Director, Division of Nuclear Materials Safety, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406:

1. Within 30 days of the date of this Order, the schedule for performance of the required quarterly audits. The NRC shall be notified at least 30 days in advance of any change of the scheduled audit dates.
 2. Within 30 days after the completion of each audit, for a period of one year from the date of this Order, a report describing the results of the quarterly audits. In cases where the audit identifies deficiencies in which devices do not comply with the Registry Certificate, the report shall include a description of corrective action planned to ensure that commitments or requirements are met, a schedule for completion of the corrective action, and a basis as to why the NRC should not take further enforcement action for the continued failure to comply with NRC requirements.
 3. Monthly status reports that include the status of all actions required by this Order.
- H. If, for any reason, a date specified in the above conditions cannot be met, Apgee shall contact, in writing, Mr. A. Randolph Blough, Director, Division of Nuclear Materials Safety, at the address in Provision G above.

The Regional Administrator, Region I, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 26th day of June, 1997

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

May 15, 1997

EA 97-202

Mr. David F. Johns, P.E.
President and Radiation
Safety Officer
Capital Engineering Services, Inc.
101 Weston Drive Unit 3
Dover, Delaware 19901

SUBJECT: ORDER REVOKING LICENSE
(NRC Inspection No. 030-33244/96-001 and NRC Office of
Investigation Report No. 1-96-042)

Dear Mr. Johns:

On February 12, 1996, your NRC license was suspended by an NRC Order for nonpayment of fees. However, on May 17, 1996, the NRC issued a Conditional Order Extending Time that granted your request to pay the delinquent fees in twelve monthly installment payments and extended the effective date of the February 12, 1996 Order to March 15, 1997. In addition, the Conditional Order stated that, in the event the licensee fails to pay an installment during the 12-month period, each and every term and condition set forth in the February 12, 1996 Order will become immediately effective without further notice. You failed to make the first installment due June 15, 1996, after the Conditional Order was issued. Accordingly, on June 16, 1996, the terms of the February 12, 1996 "Order Suspending License" again became effective and your license is currently suspended.

The enclosed Order Revoking License is being issued because of your violations of NRC requirements. Based on the findings of an NRC inspection and an investigation by the NRC Office of Investigations, the NRC has concluded that you violated other NRC requirements by: (1) deliberately using licensed material on numerous occasions after your license had been suspended; (2) failure to maintain dose records for employees who used the gauges; and (3) failure to test sealed sources for leakage and/or contamination.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of the Order may also subject the person to a civil monetary penalty.

Given your deliberate misconduct, the NRC no longer has the necessary assurance you would perform NRC-licensed activities safely and in accordance with NRC requirements, should you engage in NRC-licensed activities under any other NRC license. Therefore, a separate Order, which precludes you from any involvement in NRC-licensed activities for a period of three years, is being issued to you concurrently.

Capital Engineering Services, Inc. - 2 -

In our letter dated March 26, 1997, we enclosed the synopsis of Investigation Report No. 1-96-042, which indicated that you willfully violated NRC requirements associated with dosimetry. Upon reconsideration of the facts in this case, the NRC has decided not to cite such failure in the enclosed Order because it is not clear that your employees, who were subject to radiation levels, were likely to receive an annual dose in excess of 10% of the applicable limit in 10 CFR 20.1201(a).

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room.

Questions concerning these actions should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

Sincerely,

Edward L. Jordan
Deputy Executive Director for Regulatory
Effectiveness, Program Oversight,
Investigations and Enforcement

Docket No. 030-33244
License No. 07-30056-01

Enclosures:

1. Order Revoking License
2. Listing of Violations

cc w/encls:
State of Delaware

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
Capital Engineering Services,	)	Docket No. 030-33244
Inc.	)	License No. 07-30056-01
Dover, Delaware	)	EA 97-202

ORDER REVOKING LICENSE

I

Capital Engineering Services, Inc., (Licensee) is the holder of Byproduct Nuclear Material License No. 07-30056-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of moisture/density gauges containing sealed sources. The License was originally issued on September 14, 1993, and is due to expire on September 30, 1998.

On February 12, 1996, the License was suspended by an NRC Order for nonpayment of fees. However, on May 17, 1996, the NRC issued a Conditional Order Extending Time that granted the Licensee's request to pay the delinquent fees in twelve monthly installment payments and extended the effective date of the February 12, 1996 Order to March 15, 1997. In addition, the Conditional Order stated that, in the event the Licensee fails to pay an installment during the 12-month period, each and every term and condition set forth in the February 12, 1996 Order will become immediately effective without further notice. The Licensee failed to make the first installment due June 15, 1996, after the Conditional Order was issued. Accordingly, on June 16, 1996, the terms of the February 12, 1996 "Order Suspending License" again became effective.

II

On October 30, 1996, November 19, 1996, February 20, 1997, and March 5, 1997, the NRC conducted an inspection at the Licensee's facility in Dover, Delaware. During the inspection, the inspector determined that the Licensee had continued to use licensed radioactive material after issuance of the NRC Order Suspending the License on February 12, 1996. Specifically, the Licensee used licensed material on numerous occasions between February 12, 1996, and May 16, 1996, before the Conditional Order Extending Time was granted, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3.

Additionally, the Licensee continued to use the gauges on numerous occasions after June 16, 1996, the date on which the Order Suspending License once again became effective because of the Licensee's failure to pay the first fee installment required by the May 17, 1996 Order Extending Time, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3.

On October 2, 1996, the NRC issued to the Licensee a letter reiterating that, given the Licensee's failure to abide by the installment plan, the License had been suspended as specified in the February 12, 1996 Order Suspending License. During an NRC inspection on October 30, 1996, the Licensee informed the NRC inspector that it continued to use licensed material because it had not received the October 2, 1996 letter until October 28, 1996.

As a result, the NRC issued a Confirmatory Action Letter (CAL) to the Licensee on November 1, 1996, which confirmed the Licensee's commitments to cease use and/or receipt of licensed material. The CAL references a telephone conversation between Mr. David Johns, the Licensee's President, and Mr. Frank Costello, NRC Region I, that took place on October 31, 1996, in which Mr. Johns agreed to the terms of the CAL.

Concurrently with NRC inspection, the NRC Office of Investigations (OI) conducted an investigation of these matters. During the investigation, the Licensee's President stated that he recalled the October 31, 1996 telephone conversation, but he understood that once he fully paid the outstanding debt, he could use the gauges. The Licensee, however, did not pay the outstanding debt¹ and, yet, continued to use licensed material on numerous occasions from October 29 to, at least, November 19, 1996, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3. In addition, based on the OI investigation and inspection findings, the NRC determined that the Licensee failed to test sealed sources for leakage and/or contamination, a violation of License Condition 13.

On April 10, 1997, an enforcement conference was scheduled with the Licensee. However, the Licensee failed to appear for the enforcement conference. In a subsequent telephone conversation between Mr. David Johns, the Licensee President/Owner and Mr. R. Blough, Director, Division of Nuclear Materials Safety, NRC Region I, Mr. Johns indicated that he was not planning to attend

¹ By Check No. 2054 dated November 20, 1996, the Licensee paid \$531.16. However, the check did not clear due to insufficient funds.

the conference. During that telephone conversation, Mr. Johns was also informed that the NRC would proceed with appropriate enforcement action.

III

Based on the above, the NRC has concluded that the Licensee deliberately violated NRC requirements by continuing to use licensed material, a violation of 10 CFR 30.10(a)(1), Condition A of the February 12, 1996 Order, and 10 CFR 30.3. This conclusion is: (1) based on the Licensee's continued use of licensed material in violation of NRC requirements despite the Licensee receiving numerous written communications that specifically informed the Licensee of the License suspension; and (2) supported by the fact that the Licensee requested from the NRC that an installment plan be established to remove the suspension of the License; the Licensee's President recalled the October 31, 1996 telephone conversation in which he was specifically informed that the License was suspended and in which he agreed not to use licensed material; and the Licensee did not pay the outstanding debt and, yet, continued to use licensed material. Furthermore, the NRC has concluded that the Licensee failed to perform leak testing of sources, a violation of License Condition 13.

The NRC must be able to rely on its Licensees to comply with NRC requirements. It is important that licensed material be used in accordance with the applicable NRC requirements. The Licensee's continued deliberate violation demonstrates that the Licensee is either unwilling or unable to comply with NRC requirements. Given the deliberate nature of the violation, as well as

the additional violations of other NRC requirements, as set forth in this section, the NRC no longer has reasonable assurance that public health and safety will be protected.

Consequently, I lack the requisite reasonable assurance that the Licensee is willing and able to conduct operations under License No. 07-30056-01 in compliance with the Commission's requirements, and that the health and safety of the public will be protected. Therefore, the public health, safety and interest require that License No. 07-30056-01 be revoked based on violations set forth above.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, IT IS HEREBY ORDERED THAT LICENSE NO. 07-30056-01 IS REVOKED.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission

Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION

Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Dated at Rockville, Maryland
this 15th day of May 1997

LISTING OF VIOLATIONS

- A. 10 CFR 30.3 requires, in part, that except for persons exempted, no person shall possess or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations.

Condition A of Order Suspending License dated February 12, 1996, states, in part, that License No. 07-30056-01 is suspended with respect to receipt and use of licensed material.

Contrary to the above, from February 12, 1996, to May 16, 1996, and from June 16, 1996, to November 19, 1996, the licensee used NRC-licensed material, cesium-137/americium-241 sealed sources, with a suspended NRC license.

- B. License Condition 13 requires, in part, that sealed sources shall be tested for leakage and/or contamination at intervals not to exceed 6 months.

Contrary to the above, from August 22, 1994, to August 19, 1996, an interval exceeding 6 months, the licensee failed to test for leakage and/or contamination of sealed sources.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

June 18, 1997

EA No. 97-145

Gary A. Saage, Jr.
Vice President - Finance
Cartier, Inc.
Two Corporate Drive
Shelton, Connecticut 06484

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY
- \$7,500
(NRC Inspection Report No. 999-90001/97-005070-02792/97-001)

Dear Mr. Saage:

This letter refers to the NRC inspection conducted in Shelton, Connecticut, on March 12, 1997, during which you and other Cartier staff confirmed that Cartier has distributed more than 16,000 timepieces containing up to 4.6 millicuries of tritium from your warehouse in Dallas, Texas, from 1985 through 1997 without an NRC license authorizing such distribution. Although you ceased such distribution in January 1997, the NRC issued you a Confirmatory Action Letter on March 14, 1997, which confirmed your commitment to not resume distribution until the NRC issued a license authorizing such use. At the time, you had already submitted an application for an exempt distribution license with the NRC Office of Nuclear Material Safety and Safeguards (NMSS), and NMSS issued you a license on April 29, 1997.

In our April 3, 1997 letter, forwarding you the inspection report, the NRC informed you that you could request a predecisional enforcement conference. In your May 1, 1997 response, you requested an enforcement conference which was held with you and other Cartier personnel on May 15, 1997, to discuss the violation, its causes, and your corrective actions. A copy of the enforcement conference report will be forwarded to you by separate correspondence.

Based on the inspection findings and the information you provided at the predecisional enforcement conference, the NRC has determined that a violation of NRC requirements occurred. The violation is described 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 inspection report. The NRC is principally concerned that for an extended duration, you bypassed the regulatory framework established to assure that possession, use, and distribution of radioactive materials is done safely and in accordance with requirements. By doing so, the NRC was unable to conduct inspections to determine whether the methods and controls you established for distributing radioactive material were in accordance with the terms and conditions of an NRC license. Given the importance of assuring that distribution of radioactive material is properly controlled, the violation is classified at Severity level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

Normally, civil penalties are assessed according to the Civil Penalty Assessment Factors in Section VI.B.2 of the NRC Enforcement Policy. However, the NRC Enforcement Policy also recognizes in Section VII that discretion may be appropriate to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message. After considering the regulatory significance of the violation which included the inability of the NRC to conduct inspections of your activities, the duration of the violation, and the costs of maintaining an NRC license which you avoided during the period of noncompliance; the NRC staff determined that it is appropriate to exercise enforcement discretion in this case and issue a civil penalty in the amount of \$7,500.

In determining the amount of the civil penalty, recognition was given for corrective action. The NRC recognizes that you eventually identified the need for a license and ceased distribution in January 1997. The NRC recognizes that you initiated comprehensive corrective action, described at the conference, which included: (1) applying for an NRC license; (2) ceasing distribution of the materials; (3) recalling time devices from all of your Cartier stores; and (4) maintaining your operations in a shutdown condition until your license was issued. Consideration was also given to the length of time during which the NRC was unable to carry out its statutory responsibility. Between 1985 and 1997, Cartier, Inc. distributed approximately 16,000 timepieces containing byproduct material without a specific or general license in violation of NRC regulations. However, since the statute of limitations period for assessing civil penalties is only five years (28 USC 2462), the NRC only considered the period between June 1992 and January 1997 for purposes of determining the amount of the civil penalty.

Therefore, to emphasize the importance of conducting NRC activities only after receiving an NRC license, and adhering to the terms and conditions of that license, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$7,500 for the violation described in the enclosed Notice. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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.

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 999-90001
License No. N/A

Cartier, Inc.

3

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

cc w/encl:
State of Connecticut
State of New York
State of Texas

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Cartier, Inc.
Shelton, Connecticut

Docket No. 999-90001
License No. N/A
EA 97-145

During an NRC inspection on March 12, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the NRC proposes 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 violation and associated civil penalty are set forth below:

10 CFR 30.3 provides in part that, except for persons exempt as provided in Part 30 and Part 150, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license.

10 CFR 30.15(a) provides in part that persons who initially transfer for sale or distribution certain items containing byproduct material are not exempt from the requirements for a license.

Contrary to the above, between 1985 and January 1997, Cartier, Inc., which did not fall within the exemptions of the regulations in Part 30 or Part 150, distributed approximately 16,000 timepieces containing byproduct material consisting of up to 4.6 millicuries of tritium and did not possess a specific or general license.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$7,500.

Pursuant to the provisions of 10 CFR 2.201, Cartier, Inc. (Licensee) is 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 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 why the license should not be modified, suspended, or revoked or why such other action 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 violation 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: 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 I.

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 King of Prussia, Pennsylvania
this 18th day of June 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

MAY 11 1994]

Docket No. 040-8724
License No. SUB-1357
EA 93-271

Chemetron Corporation
ATTN: Mr. David Sargent
President
One Citizens Plaza
Providence, Rhode Island 02903

Dear Mr. Sargent:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED CIVIL PENALTY - \$10,000

The NRC staff has reviewed the circumstances surrounding the submittal by Chemetron Corporation (Chemetron) of an incomplete final site remediation plan for the Bert Avenue and Harvard Avenue sites, and concluded that Chemetron violated NRC requirements. This issue was addressed in a Confirmatory Order Modifying License issued October 26, 1993. On November 15, 1993 you and other representatives of Chemetron participated in a transcribed enforcement conference with the NRC at NRC Headquarters to discuss Chemetron's failure to comply with Condition 12 of NRC License No. SUB-1357.

License Condition 12, which became effective May 25, 1993, required the final site remediation plan for Chemetron's Harvard Avenue and Bert Avenue sites to be submitted to the NRC by October 1, 1993. On October 1, 1993, Chemetron submitted its final site remediation plan for the Harvard Avenue and Bert Avenue sites located in Ohio, indicating in its cover letter that the submittal was "[i]n fulfillment of Condition 12 of the referenced license . . ."

Chemetron, however, did not include in the final site remediation plan three sections critical to the NRC's health and safety review of the plan; rather, the final site remediation plan stated that Chemetron would submit these three sections at a later date. The sections of the final site remediation plan that Chemetron failed to submit were the Planned Final Radiation Survey, the Safety Analysis, and the Radiological Assessment. Chemetron representatives gave no prior notice to the NRC staff, or indication in their remediation plan transmittal letter, that these sections would not be submitted or that these sections would be submitted at a later time, nor did they seek an extension of the October 1, 1993 date specified in Condition 12.

The Commission's regulation in 10 C.F.R § 40.42(c)(2)(iii) specifies the contents required in a decommissioning plan. The Planned Final Radiation

Survey section is one part of a decommissioning plan required under 10 C.F.R. § 40.42(c)(2)(iii)(C). This section of the final site remediation plan would provide the final survey procedures Chemetron proposes to demonstrate that the final site remediation plan accomplished its planned objectives in compliance with the decontamination criteria approved by the NRC for the site.

The Safety Analysis is required under 10 C.F.R. § 40.42(c)(2)(iii)(B), and contains Chemetron's description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning. The Safety Analysis evaluates the doses from routine operations and accidents during the remediation activities as discussed in Section 2.1.2 in Regulatory Guide 3.65, "Standard Format and Content of Decommissioning Plans for Licensees Under 10 CFR Parts 30, 40, and 70."

A Radiological Assessment is a necessary part of Chemetron final site remediation plan because Chemetron is proposing to use onsite disposal in accordance with 10 C.F.R. § 20.302. An application for Commission approval of proposed procedures to dispose of licensed material pursuant to 10 C.F.R. § 20.302, as required by that section, should include "an analysis and evaluation of pertinent information as to the nature of the environment, including topographical, geological, meteorological, and hydrological characteristics; usage of ground and surface waters in the general area; the nature and location of other potentially affected facilities; and procedures to be observed to minimize the risk of unexpected or hazardous exposures." The required analysis and evaluation would include a radiological assessment that discusses the doses to the public from various exposure pathways.

In summary, Chemetron's October 1, 1993, final site remediation plan was incomplete in that it lacked a Planned Final Radiation Survey and a Safety Analysis required by 10 C.F.R. § 40.42(c)(2)(iii) and a Radiological Assessment required by 10 C.F.R. § 20.302(a). Without the Planned Final Radiation Survey, the Safety Analysis, and the Radiological Assessment, the NRC staff was unable to begin evaluating the health and safety aspects of the final site remediation plan as required under the regulations for the proposed decommissioning actions. Specifically, the NRC staff was unable to begin the process leading to a prompt determination of whether the health and safety of the public and workers and the environment will be protected during decommissioning and whether Chemetron's final site remediation plan will ultimately provide adequate protection of the public health and safety if properly implemented. Consequently, Chemetron's violation of License Condition 12 is of significant concern.

To address this concern, the NRC issued the October 26, 1993 Confirmatory Order Modifying License (Effective Immediately) that added License Condition 14 which required Chemetron to submit the Planned Final Radiation Survey section of the final site remediation plan by November 1, 1993, and the Safety Analysis and the Radiological Assessment sections by November 15, 1993. On November 1, 1993, Chemetron submitted a Planned Final Radiation Survey section. On November 11, 1993, Chemetron submitted a Safety Analysis and a Radiological Assessment sections. The staff is currently evaluating the final site remediation plan in its entirety.

On November 15, 1993, a transcribed enforcement conference was conducted with you and members of your staff to discuss the violation, its causes, and Chemetron's corrective actions. During the enforcement conference Chemetron pointed out that, in its view, the cause of the violation was Chemetron's failure to properly interpret License Condition 12 and to effectively inform the NRC that the final remediation site plan would not include the aforementioned sections. Chemetron admitted that it knew that the final site remediation plan required the three sections. Chemetron representatives, however, indicated that they thought that the intent of License Condition 12 was met when the final site remediation plan was submitted even though the plan lacked the three sections. In addition, Chemetron representatives indicated that the information for the three sections had previously been submitted to NRC and would only require update. However, the prior submittals were based on a site characterization that was inadequate.

Concerning your corrective action for this violation, the NRC had to prompt you on October 13, 1993 and issue an order on October 26, 1993 to obtain the required information. At the enforcement conference, the only corrective action presented was that senior management had reemphasized the need to ensure that the NRC is aware of modifications of deadlines and the need to obtain regulatory relief. No action was taken beyond discussions among senior management to ensure lasting corrective actions or timely submissions and compliance with license conditions. This reflects neither initiative, timeliness, nor comprehensiveness.

The NRC notes that the above violation represents a significant failure to meet the license condition established to promote timely decommissioning of the Bert Avenue and Harvard Avenue sites and a significant lack of attention or carelessness toward licensed responsibilities. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, this violation has been categorized at Severity Level III.

To emphasize Chemetron's responsibility of timely compliance with its decommissioning license conditions and for informing the NRC staff of expected delays in meeting license conditions, I have been authorized, after consultation with the Commission, to issue the enclosed Notice of Violation and Proposed Civil Penalty (Notice) in the amount of \$10,000 for the Severity Level III violation. The assessment of a significant civil penalty for Chemetron's violation of License Condition 12 is appropriate to ensure that decommissioning activities at the Harvard Avenue and Bert Avenue sites proceed expeditiously.

The base value of a civil penalty for a Severity Level III violation is \$5,000. The base penalty was increased by 50% because the NRC identified the violation and increased an additional 50% because of your limited corrective

action. The remaining factors in the Enforcement Policy were considered and no further adjustment to the base civil penalty is considered appropriate. Thus, the total civil penalty is \$10,000.

In this case, the civil penalty reflects the seriousness with which the NRC views your failure to comply with a requirement with which you had been well aware and had ample time to comply. Licensees cannot take it upon themselves to decide when they will submit required information, and are expected to notify the NRC staff of expected delays in meeting those license conditions. Since 1972, Chemetron has made several attempts to decommission its facility. These attempts have involved poor site characterization efforts, unsuccessful remediation, unauthorized disposal of contaminated material at an unlicensed location, and numerous requests for extensions of time. The staff believes that the proposed civil penalty will provide the incentive to achieve compliance with the decommissioning requirements.

The NRC staff intends to defer imposition of any civil penalty until a final disposal option is approved. Consistent with the April 10, 1992 "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites", should in-situ remediation be the final disposal option approved, then the NRC staff will go forward with the normal processing of a civil penalty action. If offsite remediation is the final disposal option approved, then the NRC staff may exercise enforcement discretion and not go forward with this penalty if it appears to the NRC that Chemetron does not have adequate resources to support offsite disposal.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice in preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In your response, you should also specifically address how you will ensure timely submittal of required information and timely decommissioning efforts. 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 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.

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 of 1980, Public Law No. 96-511.

Chemetron Corporation

- 5 -

If you have any questions concerning this proposed enforcement action, you may contact Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

Sincerely,

A handwritten signature in cursive script, reading "Hugh L. Thompson, Jr.", written in dark ink.

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

Enclosure:
Notice of Violation and
Proposed Civil Penalty

cc: J. B. Martin, RIII
State of Ohio

NOTICE OF VIOLATION
AND
PROPOSED CIVIL PENALTY

Chemetron Corporation
Providence, RI

Docket No. 040-08724
License No. SUB-1357
EA 93-271

In a review of the record concerning submission of a remediation plan, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, 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 violations and associated civil penalty are set forth below:

License Condition 12 of License No. SUB-1357 requires that Chemetron submit a final site remediation plan for the Bert Avenue and Harvard Avenue sites by October 1, 1993.

10 CFR 40.42(c)(2)(iii) requires, in part, that a proposed plan for decommissioning, if required by license condition, include (1) a description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning, and (2) a description of the planned final radiation survey.

10 CFR 20.302(a) requires, in part, that a Licensee who applies for approval of proposed procedures to dispose of licensed material in a manner not otherwise authorized under the provisions of this chapter, should include in the application an analysis and evaluation of pertinent information as to the nature of the environment, including topographical, geological, meteorological, and hydrological characteristics; usage of ground and surface waters in the general area; the nature and location of other potentially affected facilities; and procedures to be observed to minimize the risk of unexpected or hazardous exposures.

Contrary to the above, on October 1, 1993, Chemetron submitted to the NRC a final site remediation plan for the Bert Avenue and Harvard Avenue sites in which Chemetron applied for approval of disposal of licensed material in a disposal cell or cells on the sites, which involves proposed procedures not otherwise authorized under the Commission's regulations, and did not include in the plan (1) a Safety Analysis describing methods used to assure protection of workers and the environment against radiation hazards during decommissioning; (2) a description of the Planned Final Radiation Survey; or (3) a Radiological Assessment including an analysis and evaluation of pertinent information as to the nature of the environment.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$10,000.

Pursuant to the provisions of 10 CFR 2.201, Chemetron Corporation is hereby required to submit a written statement of explanation to the Director, Office

Notice of Violation

- 2 -

of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (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 will be taken to avoid further violations. If an adequate reply is not received within the time specified in this Notice, an order or a demand for information may be issued to show cause 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 under 10 CFR 2.201, the Licensee 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 may 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 violation 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 and VII.A(1) of 10 CFR Part 2, Appendix C, 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 responses noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

Dated at Rockville, Maryland
this 14 day of May 1994

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

July 28, 1997

EA 93-271

Chemetron Corporation
ATTN: David C. Fannin
Vice President
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33444

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$10,000

Dear Mr. Fannin:

This refers to Chemetron's letters dated June 9, 1994 and September 9, 1994 in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated May 11, 1994. Our letter and Notice describe a violation of Condition 12 of Chemetron's license concerning the submittal of an incomplete final site remediation plan for the Bert Avenue and Harvard Avenue sites.

To emphasize your responsibility for timely compliance with decommissioning license conditions and for informing the NRC staff of expected delays in meeting license conditions, a civil penalty of \$10,000 was proposed.

In your June 9, 1994 response, you restated the events concerning compliance with License Condition 12, including the fact that three sections of the remediation plan were not submitted by the required date, you assert errors in the Notice, and you set out what you considered to be extenuating circumstances.

The staff recognizes that this action is being issued several years after your responses. However, the NRC letter of May 11, 1994, transmitting the Notice stated that an imposition decision would not be made until the NRC approved a final disposal option. The letter also stated that should in-situ remediation be the final disposal option approved, the NRC staff would go forward with the normal processing of a civil penalty action. Now that in-situ remediation has been approved, this enforcement action is being processed.

After consideration of your responses, we have concluded, for the reasons given in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty, that the penalty should be imposed. Accordingly, we hereby serve the enclosed Order on Chemetron Corporation imposing a civil monetary penalty in the amount of \$10,000. As provided in Section IV of the enclosed Order, payment should be made within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

Chemetron Corporation

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,

James Lieberman, Director
Office of Enforcement

Docket No. 040-8724
License No. SUB-1357

Enclosure(s): As Stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

CHEMETRON CORPORATION
Delray, Florida

)
)
)
)

Docket No. 040-8724
License No. SUB-1357
EA 93-271

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Chemetron Corporation (Licensee) is the holder of License No. SUB-1357 issued by the Nuclear Regulatory Commission (NRC or Commission) on June 12, 1979. The license authorizes the Licensee to possess depleted uranium-contaminated wastes at its facility located at 2910 Harvard Avenue in Cuyahoga Heights, Ohio, and at the McGean-Rohco property located between 28th and 29th Streets at Bert Avenue, Newburgh Heights, Ohio, in accordance with the conditions specified therein.

II

A review of the remediation plan submitted by the Licensee on October 1, 1993, revealed that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 11, 1994. The Notice states the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in letters dated June 9 and September 9, 1994. In its responses, the Licensee restated the events

- 2 -

concerning the violation, including the fact that three sections of the remediation plan were not submitted by the required date, asserted errors in the Notice, and set out what it considered extenuating circumstances.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$10,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Rd., Lisle, Illinois 60532-4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and
- (b) whether, on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 28th day of July 1997

APPENDIX

EVALUATION AND CONCLUSION

On May 11, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during a review of the licensee's remediation plan submitted on October 1, 1993. The letter forwarding the Notice stated that the NRC would defer imposition of any civil penalty until a final disposal option was approved and that if in-situ remediation was the approved disposal decision, the NRC would proceed with the normal civil penalty process. Chemetron responded to the Notice on June 9 and September 9, 1994. The Licensee restated the events concerning the violation, including the fact that three sections of the remediation plan were not submitted by the required date, asserted errors in the Notice, and set out its view of extenuating circumstances. In-situ remediation has now been approved and the NRC is proceeding with the normal civil penalty process. The NRC's evaluation and conclusion regarding the licensee's responses are as follows:

Restatement of Violation

License Condition 12 of License No. SUB-1357 requires that Chemetron submit a final site remediation plan for the Bert Avenue and Harvard Avenue sites by October 1, 1993.

10 CFR 40.42(c)(iii) requires, in part, that a proposed plan for decommissioning, if required by license condition, include (1) a description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning, and (2) a description of the planned final radiation survey.

10 CFR 20.302(a) [then in effect] requires, in part, that a Licensee who applies for approval of proposed procedures to dispose of licensed material in a manner not otherwise authorized under the provisions of this chapter, should include in the application an evaluation of pertinent information as to the nature of the environment, including topographical, geological, meteorological, and hydrological characteristics; usage of ground and surface waters in the general area; the nature and location of other potentially affected facilities; and procedures to be observed to minimize the risk of unexpected or hazardous exposures.

Contrary to the above, on October 1, 1993, Chemetron submitted to the NRC a final site remediation plan for the Bert Avenue and Harvard Avenue sites in which Chemetron applied for approval of disposal of licensed material in a disposal cell or cells on the sites, which involves proposed procedures not otherwise authorized under the Commission's regulations, and did not include in the plan (1) a Safety Analysis describing methods used to assure protection of workers and the

environment against radiation hazards during decommissioning; (2) a description of the Planned Final Radiation Survey; or (3) a Radiological Assessment including an analysis and evaluation of pertinent information as to the nature of the environment.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$10,000.

Summary of Licensee's Response to Violation

In its June 9, 1994, reply to the Notice of Violation, the Licensee admitted that its final site remediation plan submitted on October 1, 1993, did not contain all of the sections listed in the Table of Contents. The Licensee stated that it chose to delay submission of the Safety Analysis Report and the Radiological Assessment because of circumstances relating to ongoing litigation. The Licensee also decided that these two documents should be prepared by someone other than the Licensee's remediation consultant. Although a new consultant was engaged promptly, the work could not be completed in time to meet the deadline.

As to the Planned Final Radiation Survey, the Licensee had that document almost completed and, since the NRC had not objected to delaying submission of the section dealing with the factory buildings, believed that the entire document could be withheld until all sections were complete.

In its June 9, 1994, Answer to a Notice of Violation, the Licensee disputed the NRC's assertion in the cover letter transmitting the Notice that the NRC Staff was unable to begin the evaluation process. The Licensee noted that while the final site remediation plan consisted of numerous sections and appendices, many of the sections are reviewable separately from the main document. The Licensee specifically asserts that the Safety Analysis and the Radiological Assessment are based on computer calculations, which, in turn, rely on input parameters relating to the physical properties of the site and that only after review of other sections is nearing completion can the input parameters for the computer runs be validated. Accordingly, the Licensee asserts that review of these two sections naturally occurs near the end of the review of the application. The Licensee also contended that there would have been no risk in the NRC staff commencing its review of the material that had been submitted on October 1, 1993, even though some material was to be submitted later, as the general subject matter and the analysis scheduled for later submission were well known to the staff. The Licensee also contended that the staff did commence its review of the final site remediation plan on its receipt.

NRC Evaluation of Licensee's Response to Violation

Chemetron does not dispute the fact that three sections of the remediation plan were not submitted by the required date. Chemetron chose to delay the submittal of the Safety Analysis Report and the Radiological Assessment to engage an independent consultant to assist in preparing those documents. This decision, however, did not relieve Chemetron of its obligation to submit these sections of the Final Site Remediation Plan to satisfy License Condition 12. Chemetron did not have the authority to relieve itself of this obligation under its license, but could have obtained relief only by notifying the NRC staff of the delay and seeking approval of a revised schedule for submittal of the missing sections. Likewise, Chemetron also should have notified the NRC staff of the delay for submitting the Planned Final Radiation Survey section and obtained approval of a revised schedule for its submittal. The fact that the Final Site Remediation Plan contained tabs marking the three sections with a single page noting that the missing items would be submitted later, is an insufficient basis for not notifying the NRC staff of the delays and seeking a change in the schedule. Chemetron also noted in its Answer that the NRC staff had not objected earlier to a delay in the schedule for submitting the section addressing remediation of factory buildings on the site. However, in that case, at a management meeting held on August 31, 1993, Chemetron had informed the NRC staff that the section would be delayed until November 1, 1993, and at that meeting, the NRC agreed to the proposed schedule for that section.

In its Answer to a Notice of Violation, Chemetron disputed the NRC assertion that the NRC staff was unable to begin the review process for the remediation plan until the omitted sections had been submitted. While the NRC staff was able to begin review of the overall remediation plan, the NRC staff was unable to begin review of the critical public health and safety sections of the remediation plan. The Safety Analysis Report and Radiological Assessment contain the critical information needed to review the radiological health consequences of the proposed remediation activities. Without those sections, the health and safety reviews could not be initiated. Specifically, analytical techniques and assumptions rely on input parameters and these parameters cannot be reviewed in a meaningful way without knowing how they are used. Accordingly, the review of site parameters occurs only together with the review of calculational assumptions and methods, which are presented in the Safety Analysis and Radiological Assessment. It would be extremely difficult to review potential site parameters trying to anticipate what parameters might be used in the Safety Analysis and Radiological Assessment and how the parameters might be applied.

Summary of Licensee's Request for Mitigation

The Licensee's Answer to the Notice set out what the Licensee called "extenuating circumstances" regarding compliance with License Condition 12. The Licensee argued that a "course of dealing" had arisen

regarding compliance with license conditions which caused the Licensee to believe that it was substantially complying with its license condition when it submitted the remediation plan on October 1, 1993. The Licensee noted that because of earlier actions, it felt that notification of the delay was sufficient, and earlier submissions of less complete remediation plans had been accepted.

The Licensee further disagreed with the NRC's statement that it had to prompt the Licensee to obtain the required information, as the Licensee had already planned for submission of the three missing sections. The Licensee also disagrees with the characterization of its corrective actions as reflecting neither initiative, timeliness, nor comprehensiveness. The Licensee contended that it has vigorously pursued site cleanup since 1990, when it was reorganized and that management has been actively involved in the remediation effort. Finally, the Licensee disagreed with the escalation of the civil penalty by 50% for NRC identification, as the sections that were to be submitted later were clearly marked in the tabbed sections.

NRC Evaluation of Licensee's Request for Mitigation

In its Answer, Chemetron indicated that a "course of dealing" had arisen regarding their compliance with license conditions. The example used was the submittal of the remediation information for the factory buildings. As noted above, in that instance, Chemetron had informed NRC staff in a management meeting held on August 31, 1993, that this section would be delayed until November 1, 1993, and at that meeting the NRC agreed to the proposed schedule. This "course of dealing" suggests that Chemetron was aware of the need to inform NRC staff of expected delays and reach an understanding on schedule changes.

Chemetron also indicated that in the course of settling pending litigation, Chemetron realized a need for a consistent set of calculations for the remediation plan for the hearing, and which would further the objective of prompt site remediation. Notwithstanding the need for a high quality technical submittal and Chemetron's litigation incentives to promptly decommission the site, Chemetron still could and should have requested an alternative schedule, without NRC prompting, for the missing sections.

It is not up to the licensee to decide which requirement it will meet and when it will comply. The license sets forth requirements that, until changed, are required to be met. The Commission recognizes that there may be unforeseen matters in the decommissioning process warranting schedule relief. However, the process to obtain that relief is to notify the NRC to obtain approval for schedule changes, either by license amendment or by the Commission exercising discretion. Moreover, had the NRC exercised discretion and not taken enforcement action in the past, this would not be a basis for the Licensee to conclude that the

NRC would exercise discretion with regard to License Condition 12. It is not acceptable to just disregard the requirement date. The purpose of the civil penalty is to emphasize that a licensee is not free to disregard license requirements for its convenience.

Chemetron also contested the statement in the NRC letter forwarding the Notice that the NRC needed to prompt them to submit the missing documents, as Chemetron staff had already planned to submit the missing sections. In this case, Chemetron representatives gave no prior notice to the NRC staff or indication in their Site Remediation Plan transmittal letter that these sections would not be submitted or when these sections would be submitted, nor did they seek an extension of time. In light of Chemetron's inaction in this case and its history as to other submissions, the NRC staff considered it necessary to prompt Chemetron to submit the missing sections in a telephone call on October 13, 1993 and to issue a Confirmatory Order on October 26, 1993, requiring Chemetron to submit those sections on specific dates.

Chemetron also disagreed with NRC staff that its proposed corrective actions did not reflect initiative, timeliness, or comprehensiveness. At the enforcement conference, Chemetron's stated corrective actions included only a reemphasis within management of ensuring that NRC is aware of changes to schedules and the need for Chemetron to request appropriate regulatory relief. These corrective actions did not address a full range of possible causes for the problem or propose other more comprehensive measures that could have been taken to ensure timely submittal of regulatory documents. The proposed corrective actions did not reflect awareness of or address prior delays or poor quality technical work that had been previously submitted and required substantive revisions. As a result, the NRC requested additional information, which Chemetron provided in a response dated September 9, 1994.

As to the Licensee's objection to escalation of the civil penalty for NRC identification, at the enforcement conference the Licensee stated its view that the cause of the violation was Chemetron's failure to effectively inform the NRC that the final remediation site plan would not include the Planned Final Radiation Survey, Safety Analysis, and Radiological Assessment, and in its Answer stated that the fact that the information was to be submitted in the future was clearly tabbed. However, Chemetron failed to recognize at the time of submission that it should have informed the NRC of the missing sections prior to submitting the plan and obtained an extension. While Chemetron identified that it did not provide the requested information, it did not identify a matter needing corrective action, i.e., the need to obtain NRC approval before submitting an incomplete report. Identification of the need for corrective action is inherent in the identification factor. The NRC

identified the need for corrective action to preclude repetition of the incomplete submission. Therefore, the violation was identified by the NRC. Accordingly, escalation of the civil penalty for NRC identification is appropriate.

This civil penalty also puts similar licensees on notice that the NRC expects decommissioning activities to meet required schedules absent approved schedular relief.

NRC Conclusion

The NRC has concluded that this violation occurred as stated and neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the licensee. Consequently, the proposed civil penalty in the amount of \$10,000 should be imposed.

September 8, 1997

EA 93-271

Mark Wetterhahn, Esq.
Winston & Strawn
1400 L Street N.W.
Washington, DC 20005-3502

Dear Mr. Wetterhahn:

Enclosed is the fully executed Settlement Agreement pursuant to our recent correspondence concerning settlement of the civil penalty imposed on Chemetron Corporation in EA 93-271. As stated in my letter of August 28, 1997, payment is due within two weeks.

Thank you for your cooperation.

Sincerely,

Mark A. Satorius, Deputy Director
Office of Enforcement

Enclosure: As Stated
cc: Chemetron Corporation

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 040-08724
CHEMETRON CORPORATION	)	License No. SUB-1357
Delray Beach, Florida	)	EA 93-271

SETTLEMENT AGREEMENT

1. On May 11, 1994, the Nuclear Regulatory Commission (NRC) issued to Chemetron Corporation (Licensee or Chemetron) a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$10,000 for a violation of License Condition 12 of Chemetron's license concerning submittal of an incomplete site remediation plan.

2. The Licensee responded to the Notice in letters dated June 9 and September 9, 1994. In its responses, the Licensee restated the events concerning the violation and set out what it considered extenuating circumstances.

3. The decision as to possible imposition of the civil penalty was deferred until the NRC approved a final disposal option for the sites covered by the site remediation plan. On July 28, 1997, the NRC issued an Order Imposing Civil Monetary Penalty in the amount of \$10,000 against Chemetron Corporation.

4. In a telephone conversation on August 8, 1997, between Mr. Mark Wetterhahn, counsel for Chemetron and Mr. James Lieberman, Director, Office of Enforcement, USRNC, Mr. Wetterhahn indicated that Chemetron desires to settle this matter without further litigation and agrees to pay \$5,000 in full payment of the civil penalty. Mr. Wetterhahn confirmed this by letter dated

August 13, 1997. The NRC staff concludes that in light of the information previously provided by Chemetron and the fact that Chemetron will incur significant costs for offsite disposal of certain materials, this Settlement Agreement best serves the interests of the public and the parties, and the purposes of the Atomic Energy Act of 1954 and the NRC's requirements.

5. The Licensee hereby waives the right to request a hearing on the July 28, 1997 Order Imposing Civil Penalty.

6. The payment of \$5,000 required by this settlement agreement shall be made by check, draft, money order, or electronic transfer payable to the Treasurer of the United States and addressed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland, 20852-2738.

U.S. NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

9/5/97
Date

CHEMETRON CORPORATION

Mark Wetterhahn,
Counsel for Chemetron Corporation

September 7, 1997
Date

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 18, 1996

EA 96-182

Mr. Earl F. Falast, Director
Department of Veterans Affairs
Medical Center
University and Woodland Avenues
Philadelphia, Pennsylvania 19104

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$8,000
(U.S. Department of Labor Wage & Hour Acting District Director Investigation)

Dear Mr. Falast:

This letter refers to the March 6, 1996, findings of the U.S. Department of Labor's (DOL's) Acting District Director (DD), Wage and Hour Division, in Philadelphia, Pennsylvania, regarding a complaint filed on February 5, 1996, by your Radiation Safety Officer (RSO) for the Department of Veterans Affairs Medical Center (VA) in Philadelphia. After an investigation in this case, the DD found that the VA discriminated against the RSO in violation of Section 211 of the Energy Reorganization Act of 1974, as amended, because she engaged in protected activities. Specifically, the DD found that the RSO was chastised by her immediate supervisor, the Chief of Engineering, for raising safety concerns to the NRC. For purposes of Section 211 of the Energy Reorganization Act of 1974, as amended, the decision of the DD is considered as the decision of the Secretary of Labor.

After the DD issued the decision, the NRC sent you a letter, dated April 12, 1996, requesting a description of your actions taken or planned to assure that this employment action does not have a "chilling effect" in discouraging the RSO or other licensee or contractor employees from raising perceived safety concerns. In your response, dated May 21, 1996, you indicated that the VA Philadelphia Medical Center had made several good faith efforts to assure that the incident does not have a chilling effect in discouraging other licensee or contractor employees from raising perceived safety concerns, including the posting of a notice reminding all employees of your commitment to protect their rights to contact any outside regulatory agency, including the NRC. Subsequently, on August 26, 1996, a transcribed predecisional enforcement conference was held with you, and other members of your staff, to discuss this occurrence, the apparent violation, its cause and your corrective actions. A copy of the enforcement conference report will be sent to you separately.

Based on the DD's findings, and the information that you provided during the conference, the NRC concludes that a violation of the Commission's regulations has occurred. The violation is described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). 10 CFR 30.7, "Employee Protection," prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. Protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as

amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include, but are not limited to, providing the Commission or his or her employer information about alleged violations of either the Atomic Energy Act or the Energy Reorganization Act. The RSO's contact with the NRC was clearly a protected activity. Since the discriminatory actions in this case involved the RSO's immediate supervisor who was in a position above first line supervision (Chief of Engineering), this violation has been categorized at Severity Level II in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$4,000 is considered for a Severity Level II violation. Because the violation is categorized at a Severity Level II, 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. No credit is warranted for *identification* since you did not identify the discriminatory actions. Your corrective actions consisted of: (1) issuing a memorandum to the employee's supervisor advising him that the employee's whistleblowing activities will not be considered as a negative factor in any future performance appraisals; and (2) posting a notice reaffirming the VA's commitment to protecting employees' rights to directly contact the NRC, on the Human Resources Management Service's official bulletin board, Engineering Services bulletin board, Nuclear Medicine's bulletin board and several bulletin boards in Research Service. However, credit is not warranted for your *corrective actions* because your corrective actions were neither prompt nor comprehensive. Specifically: (1) the above corrective actions were required by a March 6, 1996 letter from the DD; (2) your corrective actions did not include a determination of the root cause of the violation or a comprehensive review of the chilling effect of the prohibited discrimination on all employees in the medical center; and (3) no training was provided to managers regarding their responsibility to encourage free and open communication to the NRC with no fear of harassment, intimidation or discrimination. Accordingly, the base civil penalty is being escalated by 100% based on your failure to take prompt and comprehensive corrective actions.

Therefore, to emphasize the unacceptability of discrimination against employees in retaliation for engaging in a protected activity and the importance of continuously assuring a work environment that is free of any harassment, intimidation, or discrimination against those who raise safety concerns, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice in the amount of \$8,000 (twice the base amount), for this Severity Level II violation set forth in the Notice.

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. In addition, notwithstanding your past corrective actions documented in your response of May 21, 1996, to our "chilling effect" letter dated April 12, 1996, regarding the actions against the employee, please respond in writing within thirty days of your receipt of the Notice describing any additional actions you have taken or plan to take to minimize any potential chilling effect arising from the circumstances related to the employee that might inhibit or prevent your employees from raising safety concerns to either your own organization or the NRC. It is clear that the VA Organization

**Department of Veterans Affairs
Medical Center**

3

must assure that all managers and supervisors at all facilities have been trained to ensure that employees feel free to raise safety concerns internally or to the NRC without fear of retaliation. Therefore, your response should include your plans in addressing this area. 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(s), 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.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hubert J. Miller', is written over the typed name.

Hubert J. Miller
Regional Administrator

Docket No. 030-14526
License No. 37-00062-07

Enclosure: Notice of Violation and Proposed Imposition
of Civil Penalty

cc w/encl:
Commonwealth of Pennsylvania

ENCLOSURE

**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

Department of Veterans Affairs
Medical Center
Philadelphia, Pennsylvania

Docket No. 030-14526
License No. 37-00062-07
EA 96-182

Based on the findings of the Acting District Director (DD) of the U.S. Department of Labor (DOL) Wage and Hour Division in Philadelphia, dated March 6, 1996, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, 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 are set forth below:

10 CFR 30.7(a) states, in part, that discrimination by a Commission licensee against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

The protected activities include, but are not limited to, providing the Commission or his or her employer information about alleged violations of either the Atomic Energy Act or the Energy Reorganization Act or possible violations of requirements imposed under either of those statutes.

Contrary to the above, on November 17, 1995, the licensee discriminated against its Radiation Safety Officer (RSO) at its facility in Philadelphia, Pennsylvania, for engaging in protected activities. Specifically, after the RSO contacted the NRC regarding safety concerns related to then-impending federal government furloughs and their impact on the RSO position, a protected activity under Section 211 of the Energy Reorganization Act of 1974, as amended, the licensee's Chief of Engineering chastised the RSO because she had contacted the NRC. (01012)

This is a Severity Level II violation (Supplement VII).
Civil Penalty - \$8,000

Pursuant to the provisions of 10 CFR 2.201, Department of Veterans Affairs Medical Center (Licensee) 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 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 action 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 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 30 days, 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 violation(s) 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: 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 I.

Enclosure

3

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 King of Prussia, Pennsylvania
this 18th day of September 1996

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

September 25, 1997

EA 96-182

Mr. Earl F. Falast, Director
Department of Veterans Affairs
Medical Center
University and Woodland Avenues
Philadelphia, Pennsylvania 19104

SUBJECT: REDUCTION OF SEVERITY LEVEL OF VIOLATION, AND WITHDRAWAL OF CIVIL PENALTY, ISSUED ON SEPTEMBER 18, 1996

Dear Mr. Falast:

By letter dated September 18, 1996, the U.S. Nuclear Regulatory Commission (NRC) issued you a Notice of Violation and Proposed Civil Penalty for a violation of 10 CFR 30.7(a). Our letter and Notice described a violation that was classified at Severity Level II involving discrimination against your Radiation Safety Officer (RSO). The violation was based on a finding by the US Department of Labor (DOL) that the RSO was chastised by her supervisor after contacting the NRC in November 1995 regarding radiation safety concerns related to then impending furloughs at your facility and the impact on the RSO position. A civil penalty in the amount of \$8,000 was proposed for the violation to emphasize the unacceptability of discrimination against employees in retaliation for engaging in a protected activity and the importance of continuously assuring a work environment that is free of any harassment, intimidation, or discrimination against those who raise safety concerns.

On November 15, 1996, you sent the NRC a "Response to the Notice of Violation and Proposed Imposition of Civil Penalty" and "Answer to a Notice of Violation." In these documents, you admitted the violation but requested that the NRC reconsider the determination that the chastisement of the RSO by the supervisor constituted a Severity Level II violation warranting a civil penalty of \$8,000.00. In support of your request, you stated, among other things, that the supervisor chastised the employee not just for telephoning the NRC but for failing to notify him of certain information of which she was aware; that the chastisement was an isolated occurrence; that other employees were not "chilled" by this event from raising safety concerns; and that a Severity Level II violation is for the most severe violations involving actual or high potential impact on the public, which was not the case here.

After reviewing your response, the NRC informed you, in a letter, dated January 27, 1997, that the NRC review of this matter was continuing. Also, an investigation was conducted by the NRC Office of Investigations to determine if the RSO had been the object of continued discrimination because of her contact with the NRC in November 1995. OI did not substantiate continued discrimination against the RSO. This is reflected in the enclosed copy of the synopsis of the OI report.

After considering all of the available information, including the results of the OI investigation, the NRC has concluded that the violation would be more appropriately classified at Severity Level III and that enforcement discretion should be exercised to not issue a civil penalty pursuant to Section VII.B.6 of the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600. This determination is based on the following:

1. The chastisement did not substantially affect conditions of employment, an apology was issued and she remains the RSO;
2. DOL concluded in its September 5, 1996 notification that it found the Department of Veterans Affairs met the terms and conditions of remedies outlined in DOL's notification letter, dated March 6, 1996, concerning the violation; and
3. Investigations conducted by DOL and OI did not substantiate continued discrimination against the RSO for contacting the NRC.

We will review the effectiveness of your corrective actions during subsequent inspections.

Notwithstanding the above, you are reminded that discrimination against any employee for raising of a safety concern is a serious matter. Further, we note that recent NRC inspections have found problems that collectively indicate communication issues and poor working relationships may exist at your facility. The NRC continues to be concerned that these problems could adversely impact radiological safety at your facility. The NRC is presently reviewing the results of these inspections and will continue to closely monitor activities conducted under your license.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosures will be placed in the NRC's Public Document Room.

Sincerely,

James Lieberman, Director
Office of Enforcement

Docket No. 030-14526
License No. 37-00062-07

Enclosure: OI synopsis

SYNOPSIS

On October 18, 1996, the NRC, Office of Investigations (OI), Region I (RI), initiated this supplemental investigation to determine whether the Philadelphia Veterans Administration Medical Center (PVAMC) has discriminated against the Radiation Safety Officer (RSO) for raising concerns to the NRC about the safety impact of the RSO being furloughed.

Based on the evidence developed during this investigation, OI could not substantiate the allegation of discrimination against the RSO by PVAMC because of the RSO's November 16, 1995, telephone call to the NRC regarding the furlough issue.

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

June 25, 1997

EA 97-303

Mr. Charles A. Judd, President
Envirocare of Utah, Inc.
American Towers Commercial
46 West Broadway, Suite 240
Salt Lake City, Utah 84101

SUBJECT: Confirmatory Order (Effective Immediately)

Dear Mr. Judd:

The enclosed Confirmatory Order (Effective Immediately) is being issued to confirm the commitments documented in our letter of June 23, 1997. This Order supersedes our Confirmatory Action Letter (CAL) dated June 12, 1997.

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

In addition, as you are aware, any resumption of receipt of Special Nuclear Material (SNM) is subject to the approval of the State of Utah in accordance with the State's requirements. In that regard we intend to invite the State to participate in any meetings related to this Order and consult with them with respect to the regulatory decisions required by this Order.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

James Lieberman, Director
Office of Enforcement

Docket No. 040-8989
License No. SMC-1559

State of Utah License No. UT2300249

Enclosure: As Stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

ENVIROCARE OF UTAH, INC.
Salt Lake City, Utah

)
)
)
)

Docket No. 040-8989
License No. SMC-1559
EA 97-303

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Envirocare of Utah, Inc., (Envirocare) is the holder of Utah License No. UT2300249 issued by the State of Utah. The State license authorizes Envirocare to transfer, receive, possess and use designated radioactive material as specified therein. The State license was most recently amended on August 16, 1996, and is currently under timely renewal status. Envirocare is also the holder of NRC License No. SMC-1559, issued by the Nuclear Regulatory Commission (NRC or Commission). The NRC license authorizes Envirocare to possess and dispose of source material as defined in 10 CFR Part 40, but does not authorize possession of Special Nuclear Material (SNM). The NRC license was issued on November 19, 1993; was most recently amended on August 7, 1996; and is due to expire on November 30, 2003.

II

NRC requirements in 10 CFR 150.10 state, in part, that any person in an Agreement State who receives or possesses SNM in quantities not sufficient to form a critical mass is exempt from the requirements for a license contained in Chapters 6, 7, and 8 of the Atomic Energy Act. 10 CFR 150.11(a) states, in part, that special nuclear material in quantities not sufficient to form a critical mass means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235.

On June 9 - 10, 1997, the NRC conducted an inspection of Envirocare's facility near Clive, Utah. During the inspection, the NRC identified that Envirocare had received, and had caused to be present on site, SNM in excess of the 350 gram limit defined by the formula in 10 CFR 150.11. Specifically, the inspection revealed that Envirocare had caused to be present on site more than 2,400 grams of uranium-235 that had not been disposed of.

Based on further review of Envirocare's procedures, the NRC concluded that Envirocare did not correctly account for all SNM under its control that is awaiting disposal as being in its possession, which resulted in possession of SNM in excess of the quantities specified in 10 CFR 150.10 and 10 CFR 150.11(a), a violation of the requirement for an NRC license.

III

As a result of the NRC findings, the NRC issued to Envirocare a Confirmatory Action Letter (CAL) on June 12, 1997, which confirmed that Envirocare would take certain actions. These actions included: (1) discontinuing receipt of SNM at its facility, except in clearly defined circumstances, until receipt of written approval by the NRC; and (2) submitting a plan to the NRC for removal, or disposal at its site by June 25, 1997, of waste materials such that the sum of all SNM remaining on site would not exceed the formula quantity prescribed by 10 CFR 150.11 and Envirocare's Agreement State license.

Envirocare submitted a plan on June 16, 1997, to NRC in accordance with these commitments. In addition, in a letter dated June 18, 1997, Envirocare

requested an extension of the June 25, 1997 deadline, to August 1, 1997, with respect to achieving compliance with NRC requirements.

On June 19, 1997, representatives of Envirocare met with representatives of the NRC staff during a management meeting at the NRC headquarters office in Rockville, Maryland. During the meeting, the NRC discussed the commitments described in the CAL and proposed that Envirocare not receive any shipments of SNM pending written NRC approval, except for shipments in transit as of June 11, 1997, as provided in Paragraph IV.2 of this Order. In addition, by letter dated June 23, 1997, the NRC described to Envirocare the NRC's understanding of Envirocare's commitments, and proposed incorporating those commitments into a Confirmatory Order.

Envirocare subsequently consented to issuing this Order with the conditions, as described in Section IV below, in a waiver signed on June 25, 1997.

Envirocare also agreed to waive its hearing rights. The NRC has reviewed the above conditions and concludes that implementation of these actions would provide enhanced assurance that Envirocare's program for disposal of radioactive material will be conducted safely and in accordance with NRC requirements.

I find that Envirocare's commitments as set forth in Section IV are acceptable and necessary to provide for the public health, safety, and interest. In view of the foregoing, I have determined that Envirocare's commitments should be confirmed by this Order. Based on the above and Envirocare's consent, this

Order supersedes the CAL dated June 12, 1997, and is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 70 and 150, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Effective immediately, Envirocare shall not receive Special Nuclear Material (SNM) at its facility until four business days after compliance with Condition 4, except as described in Condition 2 below, unless Envirocare has received written authorization from the NRC. Such authorization will be based on review and approval by the NRC of Envirocare's submittal of a compliance plan for meeting the terms of the exemption granted in 10 CFR 150.10 and 150.11 relating to possession of SNM. NRC and Envirocare will meet on or before July 3, 1997, to discuss the issue of SNM possession limits. Envirocare shall submit its compliance plan no later than July 7, 1997. This condition applies to mixed and non-mixed low-level radioactive waste containing SNM.
2. Shipments of SNM enroute to the Envirocare facility as of June 11, 1997, may be received at the facility. In addition, any shipment, whether or not enroute by June 11, 1997, containing one gram or less of SNM per conveyance (single rail car or truck) may be received.

3. All SNM within the restricted area at the site, other than SNM placed within the disposal cell, shall be included in determining application of the exemption granted in 10 CFR 150.10. This condition is an interim condition and will be replaced by the compliance plan required by condition 1 above, after written approval of the compliance plan by the NRC.
4. Envirocare will submit to the NRC no later than August 4, 1997, written confirmation, under oath or affirmation, that the actions described in the disposal plan dated June 16, 1997, have been completed.
5. Any written communication submitted by Envirocare in connection with this Order shall be provided to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-8064.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by Envirocare of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Envirocare, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission
Washington, D.C. 20555, and include a statement of good cause for the
extension. Any request for a hearing shall be submitted to the Secretary,
U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service
Section, Washington, D.C. 20555. Copies also shall be sent to the Director,
Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington,
D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at
the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza
Drive, Suite 400, Arlington, Texas 76011-8064, and to Envirocare. If such a
person requests a hearing, that person shall set forth with particularity the
manner in which his interest is adversely affected by this Order and shall
address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected,
the Commission will issue an Order designating the time and place of any
hearing. If a hearing is held, the issue to be considered at such hearing
shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension
of time in which to request a hearing, the provisions specified in Section IV
above shall be final 20 days from the date of this Order without further order

- 7 -

or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 25th day of June 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 13, 1997

EA No. 97-309

Mr. Robert C. Vitto, Vice President, Clinical
and Support Services
Grand View Hospital
700 Lawn Avenue
Sellersville, Pennsylvania 18960

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY
- \$4,400
(NRC Inspection Report No. 030-12571/97-002)

Dear Mr. Vitto:

This refers to the NRC inspection conducted on June 4-5, and June 10, 1997, to review the circumstances associated with an event which occurred at your facility on June 3, 1997, involving the shipment of a package from your facility to Syncor Corporation in Allentown, Pennsylvania. The package was found to have external contamination levels above the regulatory limit. As described in the NRC inspection report which was sent to you on June 30, 1997, four apparent violations of NRC requirements were identified during the inspection. On July 17, 1997, a Predecisional Enforcement Conference was conducted with you and members of your staff to discuss the violations, their causes, and your corrective actions. A copy of the enforcement conference report was sent to you by separate correspondence on August 6, 1997.

Based on the information developed during the inspection, and the information that you provided during the conference, the NRC has determined that three violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. These violations involve: (1) failure to ensure, by examination or special tests (surveys), that the external contamination levels of a Class 7 (radioactive) materials package (containing small quantities of technetium-99m from spent or unused doses) were within regulatory limits prior to shipment, and delivery to a carrier for shipment back to Syncor Corporation in Allentown, Pennsylvania, a Class 7 (radioactive) materials package with non-fixed (removable) contamination measuring as high as 6,000 dpm/cm², which is approximately 273 times the regulatory limit; (2) failure to conduct daily radiation level surveys and weekly removable contamination level surveys of the Nuclear Medicine hot lab floor from where the package was apparently contaminated; and (3) failure of the Radiation Safety Officer (RSO) to ensure that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

These violations are of very significant concern to the NRC because they resulted in the shipment of material in the public domain with contamination levels in excess of the regulatory limits. The lack of adequate oversight by the RSO appears to have been a significant contributor to these violations. During the inspection, the RSO was unable to clearly define his responsibilities with respect to program oversight, and during the enforcement conference, admitted that he did not routinely observe activities. The lack of adequate program oversight was evident by the inconsistent techniques exhibited by the nuclear medicine technologists (NMTs) in surveying and wiping package surfaces prior to shipment. During the inspection, the NRC also learned that: (1) the RSO was not observing the NMTs' techniques to minimize contamination; (2) the RSO was unaware of the discrepancies in technique among the NMTs in performing the required package surveys; and (3) the reporting between the NMTs and the RSO was inadequate. With respect to the latter issue, the RSO was not even aware that the contaminated package had been sent to Syncor until he was contacted by the NRC on June 4, 1997.

The failure of your staff to ensure that an adequate survey was performed prior to transporting the package to Syncor, as well as the failure of the RSO to adequately oversee the radiation safety program, represents a very significant regulatory concern because such failures have the potential to cause unnecessary exposure to members of your staff, the staff at the receiving facility, and members of the public while the package is in transport. Normally, given the regulatory significance of these violations and the fact that these violations involved surface contamination levels in excess of 50 times the NRC limit, these violations would be classified in the aggregate as a Severity Level I problem in accordance with Supplement V, "Transportation," of the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. However, after considering the facts in this case and the actual safety consequences that resulted from these violations, the NRC has determined that these violations are best classified in the aggregate as a Severity Level II problem in accordance with Section IV, "Severity of Violations," of the Enforcement Policy.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$4,400 is considered for a Severity Level II violation or problem. Consistent with the enforcement policy, the NRC considered whether credit was warranted for both *Identification* and *Corrective Action*. Credit for identification is not warranted since Syncor reported the contaminated package to the NRC after identifying that the package had external contamination in excess of the regulatory limit. The remaining violations were subsequently identified by the NRC. Credit for corrective action is warranted because your actions, at the time of the enforcement conference, were both prompt and comprehensive. These actions, which were noted in the inspection report and/or at the conference, included: (1) review, evaluation, and revision to procedures by the RSO and the Lead Nuclear Medicine Technologist; (2) retraining of all technologists; (3) commitment by management to assure increased RSO involvement in the Radiation Safety Program; (4) plans to perform surveys and wipe tests of all surfaces of the transport cases; (5) plans to utilize a package identification system to identify incoming and outgoing transport cases; and (6) plans to wipe test Hot Lab floors weekly, and survey them daily.

Therefore, to emphasize the importance of appropriate management and RSO oversight of the radiation safety program and the importance of ensuring that shipments containing radioactive material comply with regulatory requirements, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice in the base amount of \$4,400. In addition, issuance of this Notice constitutes escalated enforcement action, that may subject you to increased inspection effort.

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 also confirm the commitments you made at the conference, and during the inspection. 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).

Sincerely,

A handwritten signature in dark ink, appearing to read 'H. Miller', written in a cursive style.

Hubert J. Miller
Regional Administrator

Docket No. 030-12571
License No. 37-13187-02

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/encl:
Commonwealth of Pennsylvania

ENCLOSURE

**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

Grand View Hospital
Sellersville, Pennsylvania

Docket No. 030-12571
License No. 37-13187-02
EA 97-309

During an NRC inspection conducted on June 4 - 5, and June 10, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG 1600, the NRC 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 violations and associated civil penalty are set forth below:

- A. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 173.475 requires, in part, that before each shipment of any Class 7 (radioactive) materials package, the offeror must insure by examination or appropriate tests, that the external radiation and contamination levels are within the allowable limits in 49 CFR Parts 171-178. 49 CFR 173.443(a) requires, in part, with exceptions not applicable here, that for beta and gamma emitting contaminants, the level of non-fixed (removable) radioactive contaminants on the external surfaces of each package offered for transport, at the beginning of transport, not exceed 0.4 Becquerel per square centimeter (22 disintegrations per minute per square centimeter) on any single wiping material, determined by wiping an area 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and averaging over the surfaced wiped. Sufficient measurements must be taken in the most appropriate location to yield a representative assessment of the non-fixed contamination levels.

Contrary to the above, on June 3, 1997, before shipment of a Class 7 (radioactive) materials package, the offeror (licensee) did not ensure by examination or appropriate tests, that the external contamination levels were within the allowable limits; and the licensee delivered to a carrier for transport a Class 7 (radioactive) materials package which was determined to have non-fixed contamination caused by technetium-99m, a beta/gamma emitting radionuclide, of up to approximately 6,000 disintegrations per minute per square centimeter over the surface wiped. (01012)

- B. 10 CFR 35.70(a) and (e) requires, in part, that a licensee shall: (1) survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use, and (2) survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use.

Contrary to the above, as of June 4, 1997, the licensee: (1) did not survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use, and (2) did not survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use. Specifically: (01022)

1. Since April, 1994, the licensee did not survey the Nuclear Medicine hot lab floor with a radiation detection survey instrument at the end of each day of use. The hot lab is an area where radiopharmaceuticals were routinely prepared for use; and
2. Since April, 1994, the licensee did not survey each week, the Nuclear Medicine hot lab floor for removable contamination. The hot lab is an area where radiopharmaceuticals were routinely prepared for use.

- C. 10 CFR 35.21(a) requires, in part, that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

Contrary to the above, since December 8, 1995, the licensee, through its Radiation Safety Officer, failed to ensure that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program. Specifically, the Radiation Safety Officer was (1) not observing the technologists techniques to minimize contamination, (2) unaware of the discrepancies in technique among the technologists in performing the required package surveys (radiation level surveys and removable contamination level surveys), and (3) not aware of the failure to perform the required dose rate and removable contamination surveys. (01032)

These violations represent a Seventy Level II problem. (Supplement V).
Civil Penalty - \$4,400.

Pursuant to the provisions of 10 CFR 2.201, Grand View Hospital (Licensee) 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 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 why the license should not be modified, suspended, or revoked or why such other action 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: 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 I.

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

Enclosure

4

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 King of Prussia, Pennsylvania
this 13th day of August 1997**

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

September 11, 1997

EA 97-122

Mr. David Longa
Deputy Director
Guam Environmental Protection Agency
Monitoring Services Division
P.O. Box 22439-GMF
Barrigada, Guam 96911

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$2,750
(NRC Inspection Report No. 030-32364/97-01)

Dear Mr. Longa:

This refers to the inspection conducted on February 19 through March 26, 1997, of your Barrigada, Guam facility. This reactive inspection was conducted after the NRC received information that Guam Environmental Protection Agency (GEPA) had ceased operations at its Harmon, Guam facility and had relocated its licensed radioactive material to its Barrigada, Guam location. The findings of the inspection were communicated to you on March 26, 1997 during a telephonic exit briefing. The results of the inspection were documented in the subject inspection report dated April 28, 1997. The report identified four apparent violations which were being considered for escalated enforcement action, and the report noted that GEPA intended to transfer its licensed material and terminate its license soon. However, before making an enforcement decision regarding the apparent violations, the cover letter to the inspection report stated that we were providing you with an opportunity to either respond to the apparent violations by May 28 or request a predecisional enforcement conference by May 5, 1997. Since we had not received a response to the apparent violations, we contacted you on numerous occasions by telephone starting in mid-June, and each time we were told that you had not had time to respond to the apparent violations, but that you would provide a response shortly. Further, during those telephone conversations you stated that you had not yet transferred the material but that you still intended to transfer it and terminate your NRC license. GEPA did provide a written response in a letter dated August 5, 1997, but had not transferred its material at that time.

Based on the information developed during the inspection, and the information provided in GEPA's August 5 response to the inspection report, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty and the circumstances surrounding them are described in detail in the subject inspection report. The apparent violations involve failures to: (1) maintain a gas chromatograph device containing licensed material in an area that was accessible only to persons authorized to use the device and locked when

an authorized user was not physically present; (2) notify NRC of the relocation of licensed activities to a facility located in Barrigada, Guam; (3) amend your NRC license after the departure of the authorized radiation safety officer in September 1996; and (4) prepare shipping papers for the transport of radioactive material in March 1996.

GEPA's August 5 letter requested that NRC consider the mitigative circumstances identified in its letter. These circumstances were that in March 1996, GEPA was informed virtually overnight that the entire GEPA facility would have to be relocated within a two week period, and that storage space at the new location was severely limited. Further, the August 5 letter reiterated GEPA's intent to transfer the radioactive material to another licensed entity, and once transferred, to request that its NRC license be terminated. However, our position regarding these circumstances is that GEPA is still obligated to meet NRC requirements until the radioactive material is transferred and the license is terminated.

The failure to maintain licensed material in a secured location as described in the license application was also identified during the previous NRC inspection, and is therefore considered a repeat violation. NRC normally considers failures to provide adequate security and control for licensed radioactive material stored or in use in unrestricted areas to be of significant concern. In addition, the four apparent violations collectively indicate a lack of management oversight of this licensed activities. Therefore, these violations are classified in the aggregate in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III problem.

In accordance with the Enforcement Policy, a civil penalty in the base amount of \$2,750 is considered for a Severity Level III problem. Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. After reviewing the August 5 letter, we find that GEPA is not deserving of corrective actions credit because your corrective actions are not adequate. We acknowledge that, during the inspection, you took actions to secure the gas chromatograph, and therefore you corrected that violation. However, GEPA is currently in continuing violation because its license has not been amended to reflect (1) the new storage location, and (2) a current, qualified radiation safety officer. GEPA's lack of timely action to transfer its licensed material or to amend its license appropriately, has resulted in the continuation of these violations. As a result, we cannot conclude that you have taken timely corrective action to return to compliance.

Therefore, to emphasize the importance of prompt and comprehensive correction 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 \$2,750 for this Severity Level III problem. However, the NRC staff will provide you with a grace period of 60 days from the date of this letter; that is, if you transfer the licensed material to an authorized recipient within 60 days of the date of this letter and comply with NRC's requirements contained in

10 CFR 30.36, the NRC will forego imposition of the \$2,750 civil penalty in the enclosed Notice. Your license will be terminated by written notice in accordance with 10 CFR 30.36(k) when GEPA has provided the NRC with the information described in 10 CFR 30.36.

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. Notwithstanding the 60 day grace period, please note that your response to the Notice must be provided within 30 days. 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.

Sincerely,

Ellis W. Merschoff
Regional Administrator

Docket No. 030-32364
License No. 56-29030-01

Enclosure: Notice of Violation and
Proposed Imposition of Civil Penalty

cc (w/encl):
Dr. O. V. Natrajan, Administrator
Department of Public Health
and Social Services
Government of Guam
P.O. Box 2816
Agana, Guam 96910

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Guam Environmental Protection Agency
Barrigada, Guam

Docket No. 030-32364
License No. 56-29030-01
EA 97-122

During an NRC inspection conducted on February 19 through March 26, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, 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 violations and associated civil penalty are set forth below:

- A. License Condition 15, Application dated May 16, 1991, requires that (1) the licensee's gas chromatograph be accessible only to persons authorized to use the device; and (2) the device will be housed in a room that is locked when an authorized person is not physically present.

Contrary to the above, between March 1996 and February 19, 1997, the licensee's gas chromatograph containing 15 millicuries of nickel-63 had been housed within a storage room that was accessible to individuals who were not authorized to use the device, and was stored in an area that was not locked during periods when authorized personnel were not physically present.

This is a repeat violation.

- B. License Condition 10 requires that licensed material be used only at the licensee's facility at 130 Rojas Street, D-107, Harmon, Guam.

Contrary to the above, during March 1996, the licensee moved its licensed activities to a new facility located in Barrigada, Guam, a location not identified on the license.

- C. License Condition 11.B specifies that the Radiation Safety Officer for activities under the license is Carmen M. Sian-Denton.

Contrary to the above, in September 1996, Carmen M. Sian-Denton discontinued employment with the licensee and discontinued serving as the licensee's radiation safety officer.

- D. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the

regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 177.817(a) requires that a carrier not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with 49 CFR 172.200-203. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, during March 1996, the licensee transported a Perkin-Elmer detector cell containing a 15 millicurie nickel-63 foil source outside the confines of its plant without a shipping paper prepared in accordance with 49 CFR 172.200-203.

These violations represent a Severity Level III problem. (Supplement VI).
Civil Penalty - \$2,750.

Pursuant to the provisions of 10 CFR 2.201, Guam Environmental Protection Agency (Licensee) 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 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 why the license should not be modified, suspended, or revoked or why such other action 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: 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

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).

Dated at Arlington, Texas,
this 11th day of September 1997

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

November 4, 1997

Mr. Jesus T. Salas
Administrator
Guam Environmental Protection Agency
P.O. Box 22439-GMF
Barrigada, Guam 96911

Subject: WITHDRAWAL OF PROPOSED CIVIL MONETARY PENALTY

Dear Mr. Salas:

This refers to your letters dated August 5, 1997, and October 7 and 16, 1997, and to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) issued by the NRC on September 11, 1997. The Notice proposed a civil monetary penalty of \$2,750 for four violations related to your possession of a gas chromatograph containing nickel-63. These violations were considered in the aggregate to represent a Severity Level III problem.

Your letter dated August 5, 1997, indicated that you intended to return the device to the manufacturer and request termination of your NRC license. The letter that accompanied the Notice provided that the NRC would forgo imposition of the \$2,750 civil penalty if you transferred the device to an authorized recipient within 60 days of the Notice and requested termination of the license.

By your letter dated October 16, 1997, you responded to the Notice and informed the NRC that the device was transferred to an authorized recipient. Your NRC Form 314, requesting termination of your license, was received by the NRC on October 17, 1997. Therefore, the \$2,750 civil penalty proposed in the Notice is hereby rescinded. Byproduct Material License No. 56-29030-01 is being terminated by separate correspondence.

In accordance with 10 CFR 2.790 of the "NRC's Rules of Practice", a copy of this letter will be placed in the NRC's Public Document Room.

Sincerely,

James Lieberman, Director
Office of Enforcement

Docket No. 030-32364
License No. 56-29030-01

cc: Dr. O. V. Natrajan, Administrator
Department of Public Health
and Social Services
Government of Guam
P.O. Box 2816
Agana, Guam 96910

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

July 1, 1997

EA 97-193

Mr. John Herbert, Sr., President
Hagerstown Construction Services, Inc.
1023 Maryland Avenue
Hagerstown, Maryland 21740

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY
- \$2,750
(NRC Inspection Report No. 150-00019/97-001)

Dear Mr. Herbert:

This letter refers to the NRC inspection conducted on April 17 and 18, 1997, at the above mentioned facility, of activities authorized by an NRC general license granted to you pursuant to 10 CFR 150.20(a). During the inspection, three apparent violations of NRC requirements were identified. A copy of the NRC inspection report was forwarded to you with our letter dated April 28, 1997. On May 16, 1997, a predecisional enforcement conference was held in the Region I office to discuss the apparent violations, their causes, and your corrective actions. A copy of the predecisional enforcement conference report was sent to you with our letter dated May 21, 1997.

Based on the information developed during the inspection, as well as information provided during the enforcement conference, the three violations are being cited and are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). The circumstances surrounding the violations are described in detail in the subject inspection report. The most significant violation involved the performance of licensed activities in Pennsylvania and West Virginia on numerous occasions, from approximately July 1996 until April 11, 1997, without first filing the appropriate reciprocity forms with the NRC. These forms are required so as to provide the NRC the necessary notification that nuclear gauges (containing radioactive material) possessed under your Maryland license would be used in areas subject to NRC jurisdiction. Your failure to file these forms resulted in the NRC being unaware, for an extended period, that NRC licensed activities were being conducted by your company in those locations.

Notification of the NRC is important since the NRC, rather than the State of Maryland, regulates the use of the gauges in the Commonwealth of Pennsylvania, State of West Virginia, and in areas of exclusive Federal jurisdiction within Maryland. You should have known of the need to file these reciprocity forms since your company had filed for reciprocity with the NRC in 1993 to allow the use of the gauges at a site in Somerset, Pennsylvania. Your Maryland license states that it is valid only within the State of Maryland. During the predecisional enforcement conference, you indicated that in the fall of 1994, the individual responsible for scheduling field work and knowledgeable of NRC reciprocity requirements, left the employ of your company. However, two of the documents, where you did in the past request

reciprocity, were signed by the Radiation Safety Officer, who is still employed by your company. The Radiation Safety Officer stated to the NRC inspector that he was not aware when gauges were being used and did not get involved in reciprocity decisions. It is the responsibility of licensee management to be knowledgeable of the applicable NRC regulations and to assure that these regulations are met. Therefore, your failure in 1996 to file for reciprocity, represents, at a minimum, careless disregard for NRC requirements. Accordingly, this failure constitutes a willful violation of NRC requirements, and is classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) NUREG-1600. The violation is set forth in Section I of the enclosed Notice.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Since the violation was willful, 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. Credit for identification is not warranted since the violations were identified by the NRC. Credit for corrective actions is warranted because your corrective actions, once the violation was identified, were both prompt and comprehensive. These actions included: (1) stopping all work in Pennsylvania as soon as you were reminded of the reciprocity requirements; (2) requesting and obtaining information from the NRC regarding the filing for reciprocity; and (3) applying for an NRC license.

Therefore, to emphasize the importance of conducting NRC activities only after adhering to appropriate reciprocity requirements, so that the NRC can verify that the activities are conducted safely and in accordance with requirements, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed civil penalty in the amount of \$2,750.

The NRC also notes your failure to file Form 241 before conducting work in areas of exclusive Federal jurisdiction. Although these examples are not included in the formal citation, you are now on notice that 10 CFR 30.3 requires that such work be performed under a specific or general NRC license. On January 13, 1997, the regulations in 10 CFR Part 150 were modified to formalize NRC's practice of allowing Agreement State licensees to perform work in areas of exclusive Federal jurisdiction under the general license in 10 CFR 150.20 by filing Form 241. Future failures to comply with the requirements of 10 CFR 30.3 and 10 CFR 150.20 may be considered deliberate and may result in criminal as well as civil sanctions. We further note that it is your responsibility, *not* the responsibility of the Federal facility, to make certain that you have filed Form 241 if the work location requires that you do so. Until you obtain your own NRC license, if you perform work on any Federal property (even though the property may be located in an Agreement State), you should obtain a written determination from the Federal agency controlling the property in order to clarify whether the location of work is in an area of exclusive Federal jurisdiction.

Hagerstown Construction Services,
Incorporated

3

The other two violations identified during the inspection involved the use of a radioactive materials package in an impaired condition, and the failure to mark a transport package with the letters "RQ". These two violations are described in Section II of the enclosed Notice and have been classified individually at Severity Level IV.

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. 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 enclosures, 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.

The response 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 of 1980, Pub. L. No. 96-511.

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 150-00019
Maryland License No. MD-43-007-01

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

cc w/encl:
State of Maryland
Commonwealth of Pennsylvania
State of West Virginia

ENCLOSURE

**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

Hagerstown Construction Services, Inc.
Hagerstown, Maryland 21740

Docket No. 150-00019
Maryland License No. MD-43-007-01
EA 97-193

During an NRC inspection conducted on April 17 and 18, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the NRC proposes 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 violations and associated civil penalty are set forth below:

I. VIOLATION ASSESSED A CIVIL PENALTY

10 CFR 30.3 requires, in 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 State 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 under the general license in section 150.20 shall, at least 3 days before engaging in each such activity, file 4 copies of NRC 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 July 6, 1996, and April 11, 1997, Hagerstown Construction Services, a licensee of the State of Maryland (Agreement State), used Troxler Model 3411-B series surface moisture density gauges (containing americium-241 and cesium-137 sealed sources) at locations in Pennsylvania and West Virginia, which are locations under NRC jurisdiction, without a specific license issued by the NRC and without filing Form-241 with the NRC. For example, Hagerstown Construction Services, used the gauges at the Mountainview Reclamation Center in Greencastle, Pennsylvania on 31 days during the period.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$2,750

II. VIOLATIONS NOT ASSESSED A CIVIL PENALTY

10 CFR 71.5(a) requires that a licensee who transports licensed materials outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

- A. 49 CFR 173.475(b) requires that prior to each shipment of any Class 7 (radioactive) materials package, the offerer must ensure by examination or appropriate tests that the package is in unimpaired physical condition except for superficial marks.

Contrary to the above, on April 17, 1997, the licensee transported on public highways a Type A package containing approximately 40 millicuries of americium-241 and 10 millicuries of cesium-137 sealed sources in an impaired physical condition. Specifically, the package was cracked in several places on one side and the corners were worn through.

This is a Severity Level IV violation (Supplement V).

- B. 49 CFR 172.324(b) requires that for each non-bulk package that contains a hazardous substance, the letters "RQ" shall be marked on the package in association with the proper shipping name. Pursuant to 49 CFR 172.101, radioactive material is classified as a hazardous substance.

Contrary to the above, on April 17, 1997, the licensee transported a Type A package containing approximately 40 millicuries of americium-241, which is a reportable quantity of a hazardous substance pursuant to 49 CFR 171.8 and Table 2 of Appendix A to 49 CFR 172.101, and the exterior of the package was not stenciled or otherwise marked "RQ".

This is a Severity Level IV violation (Supplement V).

Pursuant to the provisions of 10 CFR 2.201, Hagerstown Construction Services (Licensee) is 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 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 why the license should not be modified, suspended, or revoked or why such other action 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 violation 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: 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 I.

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 King of Prussia, Pennsylvania
this 1st day of July 1997

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

September 2, 1997

EA 97-193

Mr. John Herbert, Sr., President
Hagerstown Construction Services, Inc.
1023 Maryland Avenue
Hagerstown, Maryland 21740

SUBJECT: PROMISSORY NOTE IN PAYMENT OF CIVIL MONETARY PENALTY

Dear Mr. Herbert:

This refers to the August 7, 1997 telephone conversation between you and Mr. Frank Costello, NRC, concerning execution of a Promissory Note in Payment of Civil Monetary Penalty (Note) in response to the Proposed Civil Monetary Penalty issued to Hagerstown Construction Services, Inc. on July 1, 1997. During the telephone conversation, you agreed to pay \$2,750 over two years in settlement of the proposed civil monetary penalty. As specified in Section 2 of the enclosure, your first payment is due October 1, 1997, and on the first day of each month thereafter until the principle, interest and all other charges have been fully paid. The staff is satisfied with this agreement in light of your financial condition and, consistent with the public interest, agreed to this settlement.

You should read the enclosed "Promissory Note in Payment of the Civil Penalties" carefully. Please note that your signature constitutes a waiver of your right to contest the amount of the civil penalty and the underlying violations and empowers the United States to obtain a judgment against you without a hearing in the event that you fail to make a required payment.

You must sign in duplicate and return the Note along with your first installment payment by October 1, 1997, to James Lieberman, Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Mail Stop 7H5, Washington, D.C. 20555. Upon receipt of your signed Note, we will promptly counter-sign it and send you a copy.

-2-

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any further response will be placed in the NRC Public Document Room.

Sincerely,

A handwritten signature in dark ink, appearing to read "James Lieberman", is written over the typed name.

James Lieberman, Director
Office of Enforcement

Docket No. 150-00019
Maryland License No. MD-43-007-01

Enclosure: As stated

Promissory Note in Payment of the Civil Penalties

Docket No. 150-00019

Maryland License No. MD-43-007-01

EA 97-193

1. Obligation - For value received, Hagerstown Construction Services, Inc. (hereafter referred to as the Maker) promises to pay to the order of the U.S. Nuclear Regulatory Commission the principal sum of \$2,750 dollars, with interest accruing from October 1, 1997, at the rate of 5.00 percent per year. This note is being given for the purpose of refinancing and paying off an amount which constitutes the sum of the principal due and all unpaid interest and other charges owed to the United States on the civil penalties debt (\$2,750) which has been assigned the control number captioned above. The Maker hereby acknowledges and admits the validity and amount of that debt, which the principal sum stated in this note is intended to repay. The Maker further acknowledges that execution of this note constitutes a waiver of the right to contest the amount of the civil penalties and the underlying violations on which it is based under Section 234c of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2282c.

2. Installments - This note is to be paid in monthly installments starting on October 1, 1997, plus interest on the unpaid principal balance, payable at the Nuclear Regulatory Commission, Washington, D.C., on or before the 1st day of the month, beginning on October 1, 1997, and continuing until either the principal sum and all interest and other charges assessed under the provisions of this note have been fully paid, or this note is considered to be in default under the provisions of paragraph 6 of this note. Payments will be mailed to the following address:

U. S. Nuclear Regulatory Commission
Office of Enforcement
ATTN: James Lieberman
Mail Stop O-7H5
Washington, D.C. 20555

The following is a schedule of monthly installments exclusive of administrative charges and late-payment penalties:

PAYMENT NUMBER	PAYMENT DATE	TOTAL PAYMENT	INTEREST AMOUNT	ADMIN. AMOUNT	PRINCIPAL AMOUNT	REMAINING BALANCE
BEGINNING BALANCE.....						\$2,750.00
1	1-Oct-97	122.00	11.46		110.54	2,639.46
2	1-Nov-97	122.00	11.00		111.00	2,528.46
3	1-Dec-97	122.00	10.54		111.46	2,416.99
4	1-Jan-98	122.00	10.07		111.93	2,305.06
5	1-Feb-98	122.00	9.60		112.40	2,192.67
6	1-Mar-98	122.00	9.14		112.86	2,079.80
7	1-Apr-98	122.00	8.67		113.33	1,966.47
8	1-May-98	122.00	8.19		113.81	1,852.66
9	1-Jun-98	122.00	7.72		114.28	1,738.38
10	1-Jul-98	122.00	7.24		114.76	1,623.62
11	1-Aug-98	122.00	6.77		115.23	1,508.39
12	1-Sep-98	122.00	6.28		115.72	1,392.67
13	1-Oct-98	122.00	5.80		116.20	1,276.48
14	1-Nov-98	122.00	5.32		116.68	1,159.80
15	1-Dec-98	122.00	4.83		117.17	1,042.63
16	1-Jan-99	122.00	4.34		117.66	924.97
17	1-Feb-99	122.00	3.85		118.15	806.83
18	1-Mar-99	122.00	3.36		118.64	688.19
19	1-Apr-99	122.00	2.87		119.13	569.06
20	1-May-99	122.00	2.37		119.63	449.43
21	1-Jun-99	122.00	1.87		120.13	329.30
22	1-Jul-99	122.00	1.37		120.63	208.67
23	1-Aug-99	122.00	0.87		121.13	87.54
24	1-Sep-99	87.91	0.36		87.54	0.00
TOTAL		\$2,893.91	\$143.91		\$2,750.00	

3. Administrative Charges - Administrative charges to cover the costs incurred by the United States in handling and processing past-due amounts will be assessed at the rate of \$10.00 for each payment more than thirty (30) days past due.

4. Late Payment Penalties - Late payment penalties will be assessed on any amount more than ninety (90) days past due, at the rate of eighteen (18) percent per year.

5. Payment Crediting - The payments that the Maker makes under this note will be credited as of the date received by the U.S. Nuclear Regulatory Commission first to outstanding penalties and administrative charges; second to accrued interest; and third to the outstanding principal sum. Any payments that the Maker made to the United States on this debt during the period from the date from which interest accrues under this note (as specified in paragraph 1) until the effective date of this note (as specified in paragraph 11) shall be applied to the principal sum, interest, and other charges accruing under this note in accordance with the provisions of this paragraph.

6. Default, Acceleration, and Other Remedies - If any installment shall remain unpaid for a period of thirty (30) days or more, this note shall, at the option of the United States, be considered to be in default. In the event of default, the full amount of the principal sum, together with any accrued interest and other charges assessed under this note, less any payments actually received by the United States from the Maker, shall be due and payable in full immediately, without the need for further demands or notices to the Maker. Furthermore, in that event, the Maker agrees that the United States may exercise any collection options legally available to it, including, but not limited to, taking administrative offset, hiring a private debt collection agency, filing adverse credit reports to local and national credit bureaus, referring the Maker's account for legal action, and suspending or revoking any license or other privilege which the U.S. Nuclear Regulatory Commission has granted to the Maker.

7. Default Costs and Fees - In the event of default, the Maker agrees to pay all reasonable collection costs, court costs, and attorney's fees incurred by the United States as a result of the default and any appropriate collection actions taken by the United States.

8. Confess Judgement Provision - The Maker, if permitted by Controlling Law (as specified in paragraph 9), does hereby authorize and empower a United States Attorney, any of his assistants, or any attorney of any court of record, State or federal, to appear for the Maker and to enter and confess judgement against the Maker for the entire amount of this obligation, with interest, less payments actually made, at any time after the same becomes due and payable, as herein provided, in any court of record, Federal or State; to waive the issuance and service of process upon the Maker in any suit on the obligation; to waive any venue requirement in such suit; to release all errors which may intervene in entering upon such judgement or in issuing any execution thereon; and to consent to immediate execution on said judgement. The Maker does hereby ratify and confirm all that said attorney may do by virtue hereof.

9. Controlling Law - Except where controlled by Federal law, all disputes concerning this note shall be controlled by the law of the jurisdiction in which the Maker is incorporated at the time this note is signed.

10. Changes - The provisions of this note may not be changed except by a written agreement which specifies the agreed-upon changes and which is signed by the Maker and an authorized representative of the United States.

11. Legal Effect - This note shall not be effective or legally binding upon the Maker or the United States until it has been first signed by the Maker and then countersigned by an appropriate official of the United States in the spaces indicated below. The United States will promptly provide the Maker a copy of this note after it has been countersigned.

12. Signatures and Certification - I, as the Maker, do hereby certify that I have read and understood the terms of this note.

SIGNED: This 30th day of Sept., 1997.

JOHN L. HERBERT SR. PRESIDENT
Maker's Signature Printed Name Title
1023 Maryland Ave. N.W. MD. 20004
Street Address

52-142-4550
Taxpayer Identification Number

301-997-4080
Telephone Number

I am an authorizing official of the Maker and do certify that the Maker is incorporated in the State of _____ at the time this note is signed and that the signature above is that of an individual authorized to enter into a promissory note for the Maker.

SIGNED:

JOHN L. HERBERT SR PRESIDENT
Signature Printed Name Title
1023 Maryland Ave. Hagg MD. 21740
Address

As authorized representative of the United States, I hereby agree to the payment of this debt owed by the Maker to the United States under the terms of the installment agreement evidenced by this note.

COUNTERSIGNED:

JAMES LIEBERMAN Director, Office of Enforcement
Representative's Representative's Representative's
Signature Name Title and Agency NRC

Date Countersigned: 10 / 3, 1997
U. S. Nuclear Regulatory Commission

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
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.

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)

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

H. H. Holmes Testing Laboratories, Inc.
Wheeling, Illinois

Docket No. 150-00012
License No. IL-01828-01
EA 97-237

During an NRC investigation conducted on July 29, 1996 through April 25, 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 NRC 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 are set forth below:

10 CFR 30.3 requires, in 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 4 copies of NRC Form 241, "Report of Proposed Activities in Non-Agreement States", with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, on multiple occasions between September 1992 and December 1996, H. H. Holmes Testing Laboratories, Inc., a licensee of the State of Illinois (an Agreement State), used millicurie quantities of Cesium-137 and Americium-241 to perform moisture density activities within the States of Wisconsin and Indiana (non-Agreement States) without filing Form-241 with the NRC as required. (01012)

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$2,500.

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 and the date when full compliance was achieved is already adequately addressed on the docket in a letter from the Licensee dated June 13, 1997. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region III within 30 days of the date of the letter transmitting this Notice.

Notice of Violation and
Proposed Imposition of
Civil Penalty

-2-

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 violation(s) 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, letter with payment of civil penalty, should be addressed to: 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 III.

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

Notice of Violation and
Proposed Imposition of
Civil Penalty

-3-

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 Lisle, Illinois
this ____ day of August 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

June 18, 1997

EA 97-226

Mr. Samuel Berkowitz, President
HTP, Incorporated
700 South Dock Street
Sharon, Pennsylvania 16146

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED CIVIL PENALTY - \$5,500,
NOTIFICATION OF CONSIDERATION OF THE IMPOSITION OF DAILY CIVIL
PENALTIES, AND DEMAND FOR INFORMATION**

Dear Mr. Berkowitz:

HTP, Inc., (HTP) is the holder of expired Byproduct Material License No. 37-28463-01 (license) that was originally issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on January 17, 1990. The license authorized the possession and use of cadmium-109 and americium-241 sealed sources at HTP's facility located at 700 South Dock Street, Sharon, Pennsylvania. Your license expired on January 31, 1995. Although by letter dated January 31, 1995, you requested renewal of your license, your request was received without the prescribed application fee. HTP failed to pay the application fee despite a February 7, 1995 letter from the NRC requesting payment, as well as telephone calls from the NRC on October 20, 1995 and March 6, 1996. Finally, in our letter dated May 25, 1996, you were informed that, since you had not paid the required fee, the application was not in accordance with 10 CFR 30.36, which states that each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal accompanied by a required fee. The May 25, 1996 letter also informed you that you were required to comply with the Commission's requirements set forth in 10 CFR 30.36, "Expiration and Termination of Licenses." This regulation requires that within 60 days of the expiration of its license, the licensee begin decommissioning its facility and that within the subsequent 24 months, the licensee complete the decommissioning. In this case, decommissioning means properly transferring all licensed material.

Subsequently, an inspection was held at your facility on October 10, 1996. By letter dated November 12, 1996, we informed you that, pursuant to information received during the inspection and a telephone conversation held with Mr. Richard Goodman, your Chief Operating Officer and Radiation Safety Officer (RSO) on October 16, 1996, it was our understanding that HTP planned to properly dispose of the sealed sources in its possession as expeditiously as possible. We also stated in that letter that the only action necessary to decommission your site was the transfer of the sealed sources in your possession to an authorized recipient. We emphasized, however, that you were required to promptly divest yourself of all previously licensed byproduct material in your possession and that your failure to do so by March 31, 1997, would result in your being in violation of 10 CFR 30.36 and could result in significant enforcement action.

Notwithstanding the above, the NRC has determined that, as of this date, you have not met these requirements.

During a telephone conversation on April 21, 1997, between Mr. Goodman and Mr. C. Thor Oberg of this office, Mr. Goodman stated that you realized that you were required to divest yourself of the licensed material by March 31, 1997, but had not been able to do this as planned. Mr. Goodman also provided a facsimile on April 23, 1997, which outlined your activities since October 16, 1996, to dispose of the licensed material. In a subsequent telephone conversation on April 29, 1997, Mr. Goodman explained that he was planning to transfer the licensed material by May 13, 1997. In additional telephone conversations with your staff on April 29 and May 21, 1997, we have emphasized the necessity of your complying with the NRC requirements. However, as of this date you still possess the sealed sources.

We have, therefore, concluded that you are in willful violation of NRC requirements. The violation is described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice).

Willful violations of NRC requirements are a significant regulatory concern because the conduct of licensed activities in accordance with the Act and the Commission's requirements depends largely on the integrity of individuals conducting NRC-licensed activities. Your continued possession of licensed material, despite the notifications made to you, is particularly serious. Therefore, the violation described in the enclosed Notice has been classified as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation.¹ Because the violation was willful, 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. No credit is warranted for identification because the NRC identified the violation. No credit is warranted for your corrective actions because you remain in possession of licensed material and have not decommissioned your facility, as required.

Therefore, to emphasize the unacceptability of willful violations and the need to comply with Commission regulations, I am issuing the enclosed Notice proposing a civil penalty of twice the base amount, or \$5,500, for the violations set forth in the enclosed Notice. However, the NRC staff will provide you with a grace period of 30 days; that is, if you transfer the byproduct material to an authorized recipient within 30 days of the date of this letter and comply with the other requirements of 10 CFR 30.36, the NRC will forego imposition of the \$5,500 civil penalty in the enclosed Notice. Your expired license will be terminated by written notice in accordance with 10 CFR 30.36(j) when the NRC determines that all licensed material has been transferred.

¹A Severity Level III violation that occurred after November 12, 1996 is subject to a base civil penalty of \$2,750, 61 FR 53553, October 11, 1996.

In addition to the \$5,500 civil penalty proposed for the violation in the attached Notice, given the regulatory significance of this case, if HTP does not transfer the sealed sources within 30 days of the date of this letter, you are hereby notified that the NRC intends to consider daily civil penalties of \$500 per day. Daily civil penalties are justified because you clearly were aware that you were in violation of NRC requirements, and yet you failed to take effective corrective actions. If assessed, the daily civil penalty would continue until the sealed sources are properly transferred, and would be imposed for each thirty day period at \$15,000 per period, with the first such period beginning 30 days after the date of this letter. If HTP properly transfers the sealed sources within 30 days of the date of this letter, daily civil penalties would not be assessed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response.

In addition to the response required above, the Commission requires further information concerning the transfer of the sources so that the Commission can have reasonable assurance that these activities are conducted in accordance with NRC requirements. Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 30.32(b), in order to determine whether action should be taken to assure compliance with NRC regulatory requirements, HTP is required, pursuant to this Demand for Information, to provide the following information:

1. At least two working days prior to the date of the transfer of the byproduct material (sealed sources), notify Mr. John D. Kinneman, Chief, Nuclear Materials Safety Branch 2, NRC, Region I, by telephone (610-337-5252) so that the NRC may, if it elects, observe the transfer.
2. Within five working days following completion of the transfer or disposal, provide to the Regional Administrator, Region I, in writing, under oath or affirmation: (1) confirmation, on NRC Form 314, that the byproduct material has been transferred, (2) the last date that the byproduct material was used, (3) a copy of the survey performed in accordance with 10 CFR 30.36(j)(2), and (4) a copy of the certification from the authorized recipient that the sources have been received.

Failure to comply with the provisions of this Demand for Information may result in further enforcement action.

Questions concerning the Notice or Demand for Information should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2740.

HTP, Incorporated

4

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.

Sincerely,

Hubert J. Miller
Regional Administrator

License No. 37-28463-01 - Expired
Docket No. 030-31445

Enclosure:
Notice of Violation and Proposed Imposition of Civil Penalty

cc w/encl:
Commonwealth of Pennsylvania

ENCLOSURE

NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY

HTP, Inc.
Sharon, Pennsylvania

Docket No. 030-31445
License No. 37-28463-01
(Expired January 31, 1995)
EA 97-226

Based on a review of communications between the NRC and HTP, Inc. during the period of May 26, 1996, to May 21, 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 NRC 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 are set forth below:

10 CFR 30.36(d)(1) requires, in part, that within 60 days of license expiration, the licensee begin decommissioning its site. 10 CFR 30.36(h) requires, in part that, except in certain circumstances not applicable in this case, the licensee complete decommissioning the site as soon as practicable, but no later than 24 months following the initiation of decommissioning.

Pursuant to 10 CFR 30.4, decommissioning means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

Contrary to the above, the licensee's License No. 37-38463-01 expired on January 31, 1995, and as of the date of this Notice, a period exceeding 26 months since the date of expiration, the licensee has not completed decommissioning of its site. Specifically, the licensee has not divested itself of licensed material in its possession consisting of sealed sources containing cadmium-109 and americium-241.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$5,500.

Pursuant to the provisions of 10 CFR 2.201, HTP, Incorporated (Licensee) 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 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. 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, HTP 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 violation 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: 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 I.

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 Rockville, Maryland
this 18th day of June 1997

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

August 18, 1997

EA 97-226

Mr. Samuel Berkowitz, President
HTP, Incorporated
700 South Dock Street
Sharon, Pennsylvania 16146

SUBJECT: WITHDRAWAL OF PROPOSED CIVIL MONETARY PENALTY

Dear Mr. Berkowitz:

This refers to your letters dated July 18, 1997 and August 5, 1997, and to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated June 18, 1997. The Notice proposed a civil monetary penalty of \$5,500 for failure to divest yourself of a device containing sealed sources of cadmium-109 and americium-241 following the expiration of your NRC license. The letter that accompanied the Notice provided that the NRC would forego imposition of the \$5,500 civil penalty if you transferred the device to an authorized recipient within 30 days of the date of the letter and complied with other applicable provisions of 10 CFR 30.36. The letter further stated that your expired license would be terminated by written notice when the NRC determined that all licensed material had been transferred.

By your letter dated July 18, 1997, you responded to the Notice and informed the NRC that the device containing the NRC-licensed material had been transferred to an authorized recipient. Therefore the \$5,500 civil penalty proposed in the Notice is hereby rescinded. Byproduct Material License No. 37-28463-01 is being terminated by separate correspondence.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Satorius", is written over the typed name.

Mark A. Satorius, Deputy Director
Office of Enforcement

License No. 37-28463-01 - Expired
Docket No. 030-31445

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

September 4, 1997

EA 97-338

Nico J. Meiland
Senior Vice President
Manufacturing and Procurement
Worldwide Consumer Products
S.C. Johnson & Sons, Inc.
1525 Howe Street
Racine, WI 53403

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY
- \$2,500 (NRC Inspection Report No. 030-06740/96001(DNMS) and
Investigation Report No. 3-96-053)**

Dear Mr. Meiland:

This refers to the inspection conducted from November 21 through December 5, 1996, and the investigation conducted by the NRC Office of Investigations (OI) from December 2, 1996 through June 11, 1997, at S.C. Johnson & Sons, Inc., Mt. Pleasant, Wisconsin. The purpose of the inspection was to determine whether activities authorized by the license were conducted safely and in accordance with NRC requirements. The inspection report was sent to you by letter dated December 19, 1996, and the synopsis of the OI findings was sent to you by letter dated July 11, 1997. A predecisional enforcement conference was held on August 1, 1997 to discuss the violations, their causes, and proposed corrective action.

Based on the information developed during the inspection, the investigation, and the information provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. Four violations were identified; unauthorized disposal of licensed material, removal of licensed material from service by unauthorized persons, inadequate security of licensed material, and failure to report lost or missing licensed material in a timely matter.

The violation in Section I of the Notice, unauthorized disposal of licensed material, occurred as the result of (1) improper storage of the nuclear gauges, (2) poor judgement on the part of plant personnel participating in the scrapping program, and (3) inadequate direction provided to staff regarding the scrapping program. The lack of basic radiation safety instruction for employees frequenting areas where nuclear gauges are installed contributed to this incident which resulted in the loss of a 300 millicurie americium-241 source.

Incumbent upon each company possessing byproduct material is the responsibility to protect public health and safety by ensuring that radioactive materials are controlled at all times. Furthermore, the failure to effectively control material is a significant safety concern because it can lead to the inadvertent release of radioactive material in the public domain. Although the licensee is reasonably certain that the source is buried in a local landfill, this violation is of significant regulatory concern because several S. C. Johnson & Sons, Inc. employee's failed to follow established procedures regarding the handling of nuclear gauges. This failure resulted in loss of control of licensed material. Therefore, the violation in Section I of the Notice is categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, 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 your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit was warranted in that your actions were prompt and comprehensive. The NRC recognizes that application of the civil penalty assessment process would normally not result in a civil penalty in this case because we want to encourage prompt and comprehensive corrective action. Nevertheless, the NRC is exercising discretion in accordance with Section VII.A.1(g) of the Enforcement Policy and is proposing a civil penalty of \$2,500 for the violation identified in Section I of the Notice. Discretion is being exercised because licensed material was not controlled and is currently believed to be in a landfill.

Therefore, to emphasize the need to strictly control licensed material, 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.

Violation's A. and B. in Section II of the Notice, addressing the removal of nuclear gauges from service by unauthorized individuals and failure to secure the devices once removed, were the precursors of the violation addressed in Section I. If licensee personnel had notified the radiation safety officer before removing the device, as prescribed by the procedure, and awaited instructions before removing the devices the radioactive material would likely not have found its way to a landfill. Therefore, the violations are classified in the aggregate in accordance with the "General Statement of Policy and Procedure of NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III problem. Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were prompt and comprehensive. These actions included: (1) cessation of informal scrapping practices; (2) installation of security locks on remaining nuclear gauges; and (3) training of employees concerning the nuclear gauge

hazards, postings and procedures. Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized after consultation with the Director, Office of Enforcement, not to propose a civil penalty for this severity level III problem.

Violation C in Section II of the Notice, which addresses the failure to report the loss of licensed material in a timely manner, has been categorized as a Severity Level IV violation in accordance with the Enforcement Policy.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

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 James F. Caldwell
A. Bill Beach
Regional Administrator

Docket No. 030-06740
License No. 48-06453-01

Enclosure: Notice of Violation and
Proposed Imposition
of Civil Penalty

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

S. C. Johnson & Sons, Inc.
Mt. Pleasant, WI

Docket No. 030-06740
License No. 48-06453-01
EA 97-338

During an NRC inspection conducted from November 21 through December 5, 1996, and an NRC investigation conducted from December 2, 1996 through June 11, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, 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 violations and associated civil penalty are set forth below:

I. Violation Assessed a Civil Penalty

10 CFR 20.2001(a) requires that the licensee dispose of licensed material only by certain specified procedures.

Contrary to the above, in approximately early October 1996, the licensee disposed of a nominal 300 millicurie americium-241 sealed source by release to a landfill, a method not authorized by 20.2001. (01013)

This is a Severity Level III violation (Supplement IV).
Civil Penalty - \$2,500.

II. Violations Not Assessed a Civil Penalty

- A. Condition 17 of License No. 48-06453-01 requires, in part, that installation, initial radiation survey, relocation, removal from service, maintenance, and repair of devices containing sealed sources be performed by Carmella Richards or by persons specifically licensed by the Commission or an Agreement State to perform such services.

Contrary to the above, in late August 1996, a device containing a sealed source was removed from service at the licensee's facility by individuals other than Carmella Richards or persons specifically licensed to perform such services. Specifically, an Industrial Dynamics Model CI-2GV gauge containing a nominal 300 millicurie americium-241 sealed source was removed from service by a line mechanic and an electrician, neither of whom was authorized nor technically qualified to perform such services. (02013)

- B. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed material that is stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, between approximately late August 1996 and early October 1996, the licensee did not secure from unauthorized removal or access, a gauge containing a nominal 300 millicurie americium-241 sealed source stored on a pallet in plant production areas # 515 and 505, both unrestricted areas. (02023)

These violations represent a Severity Level III problem (Supplements IV & VI).

- C. 10 CFR 20.2201 requires, in part, that each licensee report by telephone to the NRC, immediately after its occurrence becomes known any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C to 10 CFR 20, under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas.

Contrary to the above, the licensee failed to immediately report to the NRC that licensed material in an aggregate quantity greater than 1,000 times the quantity specified in Appendix C to 10 CFR 20 was missing that could result in an exposure to persons in unrestricted areas. Specifically, on November 15, 1996, the licensee discovered that a nominal 300 millicurie americium-241 sealed source was missing and may have been disposed to a scrap recycler or the non-radioactive trash, and did not report the loss to the NRC until November 20, 1996. (03014)

This is a Severity Level IV violation (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, S.C. Johnson & Sons, Inc. (Licensee) 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 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 action 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 violation(s) 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: 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 III.

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 a 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).

Dated at Lisle, Illinois
this 4th day of September 1997

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

May 30, 1997

EA 97-155

Les Sabo
Director of Operations
Mallinckrodt Medical, Inc.
2703 Wagner Place
Maryland Heights, MO 63043

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$13,750 (NRC Inspection Report No. 030-00001/97001(DNMS))**

Dear Mr. Sabo:

This refers to the inspection conducted on January 10-12 1997, with continuing NRC review through April 8, 1997, at the Mallinckrodt Medical, Inc. facility in Maryland Heights, Missouri. During the inspection, an apparent violation of NRC requirements was identified. A copy of the NRC inspection report was sent to you on April 15, 1997. On April 30, 1997, a predecisional enforcement conference was conducted with members of your staff to discuss the apparent violations, their causes, and your corrective actions.

Based on the information developed during the course of the inspection and the information provided by your staff 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) and the circumstances surrounding it is described in detail in the subject inspection report.

The violation pertains to Mallinckrodt's failure to prepare a package containing licensed material transported outside the confines of its plant so that under conditions normally incident to transport the radiation levels do not exceed 200 millirem per hour at any point on the external surface of the package. Specifically, the radiation level at the surface of a package containing a 12 curie Ultra Techna-Kow Mo-99 generator received by the Saginaw, Michigan radiopharmacy on December 31, 1996, was 210 millirem/hour. Based upon your staff's discussion of the violation at the predecisional enforcement conference, no root cause was determined and the various scenarios explored in an attempt to arrive at a cause were inconclusive. We also learned at the conference that the generator in question was not subjected to further investigation as initially planned because of an apparent misunderstanding between the radiation safety officer and your quality control personnel.

The potential safety significance associated with the licensed material involved and the inability to determine a root cause are of significant concern to the NRC. Incumbent upon each NRC licensee is the responsibility to protect public health and safety by ensuring all requirements of the NRC license are met and any potential violations or situations that could cause violations of NRC requirements are identified and corrected expeditiously. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$13,750 is considered for a Severity Level III violation. Because your facility has been the subject of escalated enforcement actions within the last 2 years ¹, 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. Credit was warranted for *Identification* because the problem was self identified and immediate actions were taken to evaluate the generator at the point of receipt. However, credit for *Corrective Action* was not warranted. The only initial corrective action proposed was to conduct a more extensive radiation survey of each package prior to leaving your facility. While this expanded package survey is a good initiative, it neither addresses the cause of the problem discussed here or actions taken to prevent excessive radiation levels which may arise during transport. Mallinckrodt missed an opportunity to further investigate this event when it lost control of the generator in question. Corrective action for the future includes phasing out the use of most "wet" generators and replacing them with a new Dry Top Eluting generator by the end of 1997. Therefore, to emphasize the importance of control of licensed materials and comprehensive correction 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 in the base amount of \$13,750 for the Severity Level III violation. In addition, issuance of this Notice constitutes escalated enforcement action, that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

¹ A Severity Level III violation with no civil penalty was issued on October 6, 1995 (EA 95-179). A package was received at a Wilkes-Barr, PA pharmacy measuring 300 millirem at the external surface. The excessive measurement was caused by the use of the incorrect shielding on the back of the generator.

L. Sabo

-3-

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. 030-00001
License No. 24-04206-01

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Mallinckrodt Medical, Inc.
Maryland Heights, Missouri

Docket No. 030-00001
License No. 24-04206-01
EA 97-155

During an NRC inspection conducted on January 10-12, 1997, with continuing NRC review through April 8, 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 NRC 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 are set forth below:

10 CFR 71.5(a) requires that a licensee who transports licensed material outside the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 173.441(a) requires, in part, with exceptions not applicable here, that each package of radioactive materials offered for transportation be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 200 millirem per hour at any point on the external surface of the package.

Contrary to the above, on December 30, 1996, the licensee delivered to a carrier for transport licensed material, a 12 curie Ultra Techna-Kow Mo-99 generator, in a package that arrived at its destination, Mallinckrodt Nuclear Pharmacy in Saginaw, Michigan, with a radiation level of 210 millirem per hour on contact with the outer surface of the package.

This is a Severity Level III violation (Supplement V).
Civil Penalty - \$13,750

Pursuant to the provisions of 10 CFR 2.201, Mallinckrodt Medical Inc. (Licensee) 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 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 why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to

Notice of Violation and Proposed
Imposition of Civil Penalty

-2-

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: 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 III.

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

Notice of Violation and Proposed
Imposition of Civil Penalty

-3-

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 Lisle, Illinois
this 30th day of May 1997

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

September 9, 1997

EA 97-155

Les Sabo
Director of Operations
Mallinckrodt Medical, Inc.
2703 Wagner Place
Maryland Heights, Missouri 63043

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$13,750

Dear Mr. Sabo:

This refers to your letter dated June 30, 1997, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated May 30, 1997. Our letter and Notice describe one violation identified during an NRC inspection.

To emphasize the importance of control of licensed materials and comprehensive correction of violations, a civil penalty of \$13,750 was proposed.

In your response you admit that the violation occurred and agree that a civil penalty is warranted. However, Mallinckrodt contests the monetary level at which it has been categorized by the NRC. Mallinckrodt does not believe that it operates at the magnitude of risk implied by the examples listed in the "b" category of Table 1A-Base Civil Penalties of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

After consideration of your response, we have concluded for the reasons given in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty that no new information has been received that would change the Mallinckrodt Medical, Inc. categorization. Accordingly, we hereby serve the enclosed Order on Mallinckrodt Medical, Inc. imposing a civil monetary penalty in the amount of \$13,750. As provided in Section IV of the enclosed Order, payment should be made within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738. We will review the effectiveness of your corrective actions during a subsequent inspection.

In addition to the above, your June 30th letter discusses two items of clarification regarding the fate of the generator returned from the Saginaw pharmacy and the 1995 Wilkes-Barre incident when a package exceeded 200 mR/hr. Regarding the first issue, it was our understanding that before reclamation of the Saginaw generator was to occur, your quality control personnel planned to perform additional testing in an effort to arrive at a root cause for the

Mallinckrodt Medical, Inc.

- 2 -

elevated radiation levels of the package. This was discussed during the enforcement conference held on April 30, 1997. Secondly, we recognize that the circumstances of the Wilkes-Barre incident differed from the incident in question. However, the case was mentioned because it reflects Mallinckrodt's recent enforcement history which was used in accordance with the Enforcement Policy to determine the extent of the current enforcement action.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,

Mark A. Satorius, Deputy Director
Office of Enforcement

Docket No. 030-00001
License No. 24-04206-01

Enclosure: As Stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
MALLINCKRODT MEDICAL, INC.	)	Docket No. 030-00001
Maryland Heights, Missouri	)	License No. 24-04206-01
	)	EA 97-155

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Mallinckrodt Medical, Inc. (Licensee) is the holder of Materials License No. 24-04206-01 which was first issued by the Nuclear Regulatory Commission (NRC or Commission) on January 6, 1975, and renewed in its entirety on October 12, 1990. The license authorizes the Licensee to prepare and package for distribution Mo-99/Tc-99m generators and other radioactive materials in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted during January 10-12, 1997, with continuing review through April 8, 1997. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 30, 1997. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated June 30, 1997. In its response, the Licensee admitted that the violation occurred and agreed that a civil penalty is warranted. The Licensee contested the fact that the NRC

categorized it as a "b" category, industrial processor, as listed in Table 1A-Base Civil Penalties of NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions."

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$13,750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

- 4 -

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read "Mark A. Satorius".

Mark A. Satorius, Deputy Director
Office of Enforcement

Dated at Rockville, Maryland
this 9th day of September 1997

APPENDIX

EVALUATION AND CONCLUSION

On May 30, 1997, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. Mallinckrodt Medical, Inc. (Licensee) responded to the Notice in a letter dated June 30, 1997. The Licensee admitted the violation but requested mitigation of the proposed civil penalty based on its contention that the civil penalty was assessed at an inappropriate level. The NRC's evaluation and conclusion regarding the licensee's request is as follows:

Restatement of Violation

10 CFR 71.5(a) requires that a licensee who transports licensed material outside the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 173.441(a) requires, in part, with exceptions not applicable here, that each package of radioactive materials offered for transportation be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 200 millirem per hour at any point on the external surface of the package.

Contrary to the above, on December 30, 1996, the licensee delivered to a carrier for transport licensed material, a 12 curie Ultra Techna-Kow Mo-99 generator, in a package that arrived at its destination, Mallinckrodt Nuclear Pharmacy in Siginaw, Michigan, with a radiation level of 210 millirem per hour on contact with the outer surface of the package.

This is a Severity Level III violation (Supplement V).
Civil Penalty - \$13,750

Summary of Licensee's Request for Mitigation

The Licensee agrees in its June 30, 1997 letter that a civil penalty regarding this apparent violation is warranted. However, the Licensee contests the level at which the NRC categorized the civil penalty (i.e.; placement of Mallinckrodt Medical, Inc. into the "b" category (industrial processor) of Table 1A-Base Civil Penalties of Section VI.B.2.d. of the NRC Enforcement Policy, NUREG-1600).

The Licensee does not believe that its operations present the magnitude of risk implied by the examples of types of licensees listed in the "b" category. The Licensee indicates that category "c" or "d" of the referenced table is more appropriate for the nature of its operations.

NRC Evaluation of Licensee's Request for Mitigation

The NRC published a revised "General Statement of Policy and Procedure for Enforcement Actions" (Enforcement Policy) in the *Federal Register* on June 30, 1995 (60 FR 34381). A significant policy change incorporated into the revised Enforcement Policy was the strategy for assessing civil penalties. According to Table 1A-Base Civil Penalties of the NRC's Enforcement Policy, the current base civil penalty for fuel fabricators, industrial processors, and independent spent fuel and monitored retrievable storage installations is \$27,500. The civil penalty for a Severity Level III violation is 50% of the base civil penalty - \$13,750. For the purposes of this enforcement action, the staff has determined that the Licensee was properly classified as an industrial processor under category "b" of Table 1A-Base Civil Penalties and that the level of the proposed civil penalty was in accordance with the Enforcement Policy.

Mallinckrodt Medical, Inc. is a large organization that obtains or produces radiopharmaceuticals for worldwide distribution, and the Mallinckrodt Maryland Heights Production Facility is one of the largest manufacturing facilities of diagnostic and therapeutic radiopharmaceuticals in the United States. The Licensee is authorized to possess up to 100 curies of any byproduct material within atomic numbers 1 through 83. In addition, the Licensee may possess up to 10,000 curies of Molybdenum-99, 500 curies of Iodine-131, 200 curies of Selenium-75, 450 curies of Xenon-133, and 200 curies of Rhenium-186. The Licensee employs approximately 280 individuals at its Maryland Heights Production Facility and processes on average 4,000 curies of Molybdenum-99, 70-100 curies of Iodine-131, and 50 curies of Xenon-133 weekly.

Previously, when the Enforcement Policy was published as 10 CFR Part 2, Appendix C, the term "industrial processors" was defined as "Large firms engaged in manufacturing or distribution of byproduct, source or special nuclear material" in a footnote to Table 1A-Base Civil Penalties (e.g.; see footnote 3 to Table 1A-Base Civil Penalties on page 147 of 10 CFR Ch. I (1-1-94 Edition)). On page II.D-39 of the basis document for the revised Enforcement Policy, NUREG-1525, "Assessment of the NRC Enforcement Program," the stated purpose for revising Table 1A-Base Civil Penalties was to simplify it by combining categories of licensees with the same base civil penalty amounts. The proposed Table 1A - Base Civil Penalty Amounts in NUREG-1525 contained a footnote describing industrial processors as "Large firms engaged in manufacturing or distribution of byproduct, source or special nuclear material." Although the footnote that specifically defined the term industrial

processors was omitted¹ when the Enforcement Policy was reprinted as NUREG-1600, there is no indication that the term means anything different now than it has in recent years.

Mallinckrodt Medical, Inc. fits the definition of an industrial processor as previously defined in the Enforcement Policy and is appropriately categorized as an industrial processor for purposes of assessing the civil penalty. On a daily basis, the Licensee manipulates, prepares, and/or distributes to hospitals and radiopharmacies multi-curie quantities of Molybdenum-99, Iodine-131, and other radioactive materials. As a large producer and distributor of radioactive materials, Mallinckrodt's operations involve greater nuclear material inventories and have a greater potential for adverse consequences, if not properly controlled, than many other material licensees (i.e.; those classified as category "c" or "d").

In accordance with the NRC's Enforcement policy, under the revised civil penalty assessment strategy, the base civil penalty for a violation is determined using Table 1A-Base Civil Penalties. Under the revised civil penalty assessment strategy, a violation involving transportation of radioactive materials can be assessed the same base civil penalty as a violation involving plant operations or health physics. This is a significant change from the NRC's prior strategy, which used both the category of the licensee and the type of activity being conducted (e.g.; plant operations, health physics, or transportation) to assess a base civil penalty. Under the prior civil penalty assessment strategy, the base civil penalty for a violation involving transportation of radioactive materials was different than the base civil penalty for a violation involving plant operations or health physics. In accordance with the Enforcement Policy, under the revised civil penalty assessment strategy, the staff does not consider the type of activity (e.g.; the magnitude of risk associated with a particular type of activity such as transportation of radioactive materials versus plant operations) when assessing a civil penalty.

NRC Conclusion

The NRC has concluded that an adequate basis for changing the penalty category was not provided by the Licensee. Consequently, the proposed civil penalty in the amount of \$13,750 should be imposed.

¹ The footnote defining industrial processors as "Large firms engaged in manufacturing or distribution of byproduct, source or special nuclear material" was inadvertently left out of the June 30, 1995, Federal Register Notice.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 21, 1997

EA No. 97-246

Mr. David H. Freed
Vice President and General Manager
Overlook Hospital
99 Beauvoir Avenue
Post Office Box 220
Summit, New Jersey 07902-0220

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY
- \$2,750 (NRC Inspection Report No. 030-02471/97-001)

Dear Mr. Freed:

This letter refers to the NRC inspection conducted on May 7, 1997, at Overlook Hospital, Summit, New Jersey, of activities authorized by NRC License No. 29-03308-01. The inspection report was sent to you on June 27, 1997. The inspection was conducted to review the circumstances associated with the misadministration of iodine-131 to a patient at your facility. The misadministration occurred at your facility on May 5, 1997, and was reported to the NRC on May 6, 1997. During the inspection, two apparent violations of NRC requirements, which led to the misadministration, were identified. On July 16, 1997, an enforcement conference was conducted with you and other members of your staff to discuss the apparent violations, the causes, and your corrective actions. A copy of the Enforcement Conference Report was sent to you on July 30, 1997.

Based on the information developed during the inspection, as well as information provided during the enforcement conference, two violations are being cited and are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. The violations involve (1) failure to prepare a written directive prior to administration of sodium iodide I-131 in quantities greater than 30 microcuries; and (2) failure to provide adequate supervision of licensed activities, in that the nuclear medicine technologist involved with the administration of the dose to the patient was not adequately instructed on the requirements of your Quality Management Program (QMP) regarding identification of patients, and completion of written directives, prior to administration.

The misadministration, which was reported to the NRC on May 6, 1997, involved a patient, who was scheduled to receive a 2 millicurie dose of I-131 for a whole body scan, but was mistakenly given a 7 millicurie dose intended for another patient. Both doses (one of which was ordered by your Nuclear Medicine Department, and the other of which was ordered by your Radiation Oncology Department) had been delivered to your facility from the radiopharmaceutical company on May 5, 1997, and had been stored in your Hot Lab. When the patient scheduled to receive the whole body scan arrived in the Nuclear Medicine

Department, the nuclear medicine department technologist mistakenly picked up the 7 millicurie dose rather than the prescribed 2 millicurie dose. Although the technologist measured the dose in the dose calibrator, and handed the dose (with an incomplete dose administration form), to the authorized user, and reportedly told the authorized user that it was the 7 millicurie dose, the authorized user, nonetheless handed the dose to the patient who swallowed the dose. The authorized user indicated that he recognized the error after the dose was administered, but claims he did not hear the technologist tell him it was a 7 millicurie dose.

Along with the concern that there was a misadministration, the NRC is concerned that the required written directive was not completed, as required, prior to the administration of I-131. This failure to complete the directive was a contributing factor to the misadministration. The directive is to include the intended date of the administration, the patient's name, the dosage, the signature of the authorized user, and the date the written directive is signed. None of this was done. Even the patient's name was not entered on the written directive. During the inspection, it was also clear that the technologist was not sufficiently familiar with your QMP in that he did not know the correct definition of a misadministration. Clearly, the level of supervision provided by the authorized users over licensed activities, including the supervision of the technologist, was inadequate.

While this occurrence, is, in itself, significant, the misadministration takes on added significance because your facility has experienced two prior misadministrations of iodine-131 for whole body scans in 1990 and 1991. The NRC issued you a Notice of Violation and Proposed Imposition of Civil Penalty on December 12, 1991, for the second of the two misadministrations. Since the current violations also contributed to a misadministration, the violations have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation or problem. Because your facility has been the subject of an escalated enforcement action within the last two inspections¹, 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. Credit for identification is not warranted because although the misadministration was identified by your staff, the violations that led to the misadministration were identified by the NRC. Credit for corrective actions was also considered. These corrective actions, which were described during the enforcement conference, included: (1) retraining of all authorized users and nuclear medicine technologists (NMTs) regarding QMP requirements; (2) development of a competency examination for all authorized users and NMTs, with a stipulation that no individuals use NRC material until the examination is passed; (3) a comprehensive review of the misadministration event and presentation of the results of this review to the hospital's Performance Review Committee and Medical Staff Executive Committee; (4) plans to conduct

¹ The Notice of Violation and Proposed Imposition of Civil Penalty issued to Overlook Hospital on December 12, 1991, was within the last two inspections (Reference: EA 91-163).

Overlook Hospital

3

an independent annual audit of the radiation safety program by the hospital's Quality Assurance Program Committee; and (5) the development of specific sanctions for failure to comply with the QMP. Accordingly, credit for your corrective actions is deemed appropriate.

Therefore, to encourage appropriate attention to your licensed program, in particular, conformance to the QMP to preclude misadministrations at the facility, I have been authorized, after consultation with the Director of Enforcement, to propose a civil penalty in the amount of \$2,750 for the violations described in the enclosed Notice.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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).

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 030-02471
License No. 29-03308-01

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

cc w/encl:
State of New Jersey

ENCLOSURE

**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

Overlook Hospital
Summit, New Jersey

Docket No. 030-02471
License No. 29-03308-01
EA 97-246

During an NRC inspection conducted on May 7, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the NRC proposes 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 violations and associated civil penalty are set forth below:

- A. 10 CFR 35.32 (a) (1) (iv) requires that, prior to administration, a written directive is prepared for any administration of quantities greater than 30 microcuries of either sodium iodide I-125 or I-131.

Contrary to the above, on May 5, 1997, the licensee did not prepare a written directive prior to administration of quantities greater than 30 microcuries of sodium iodide I-131. Specifically, the licensee administered 7.27 millicuries of iodine-131 to a patient for whom a 2 millicurie dosage was prescribed, and did not prepare a written directive prior to the administration. **(01013)**

- B. 10 CFR 35.25 (a) requires, in part, that the licensee instruct the supervised individual in the licensee's written quality management program, and requires the supervised individual to follow the written quality management program.

Contrary to the above, the licensee did not instruct a supervised individual in the licensee's written quality management program (QMP), and the licensee did not require the supervised individual to follow the written quality management program. Specifically, a nuclear medicine technologist involved in the administration of iodine-131 to a patient on May 5, 1997, was not adequately instructed on the QMP requirements regarding appropriate identification of a patient prior to administration, as well as the requirements for completion of a written directive prior to dose administration. **(01023)**

These violations have been categorized in the aggregate as a Severity Level III problem (Supplement VI).

Civil Penalty - \$2,750.

Pursuant to the provisions of 10 CFR 2.201, Overlook Hospital is 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 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 why the license should not be modified, suspended, or revoked or why such other action 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 violation 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: 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 I.

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 King of Prussia, Pennsylvania
this 21st day of August 1997

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

July 23, 1997

EA 97-234

Ms. Michele M. Schaefer
Chief Operating Officer
St. Mary's Hospital of Blue Springs
201 West R. D. Mize Road
Blue Springs, MO 64015

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$2,500 (NRC INSPECTION REPORT NO. 030-18183/96001(DNMS))**

Dear Ms. Schaefer:

This refers to the inspection conducted on September 25, 1996, with continuing NRC review through November 13, 1996, at St. Mary's Hospital of Blue Springs (SMH), Blue Springs, Missouri. The purpose of the inspection was to determine whether activities authorized by the license were conducted safely and in accordance with NRC requirements. The inspection report was sent to you by letter dated December 6, 1996. A transcribed predecisional enforcement conference was held in the NRC Region III office on May 22, 1997, with you and other members of the SMH staff to discuss the violations, their causes, and proposed corrective actions.

Based on the information developed during the inspection and the information provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in the subject inspection report.

The NRC has concluded that the violations cited in Section I of the Notice, including the failure to perform constancy tests, the failure to perform area surveys, the failure to perform direct radiation surveys of packages, and the failure to monitor packages for external contamination, occurred as the result of careless disregard for NRC requirements. Specifically, the nuclear medicine technologist failed to perform tests and procedures required by SMH's license through complacency, rather than through mistake or error. In this case, the technologist was knowledgeable of the requirements and knew how to perform the tests, but failed as a result of complacency to fulfill the requirements, particularly when working on the weekends.

The violations in Section I of the Notice did not appear to adversely impact the health of patients. However, by failing to perform required tests and calibrations, you were deprived of important information such as knowing whether the dose calibrator was functioning properly and whether packages or work areas were contaminated with radioactive material. Violations involving careless disregard are considered willful and are of significant concern because the NRC's regulatory programs are based on licensees and

their employees acting with integrity. SMH, 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. Therefore, because of the willful nature of the violations in Section I of the Notice, they have been classified in the aggregate in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III problem. Because the violations in Section I were willful, 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. No credit was warranted for *Identification* because the violations were discovered by the NRC during an inspection. In a letter dated October 2, 1996, and at the predecisional enforcement conference held on May 22, 1997, your staff outlined corrective actions planned and/or taken which included: (a) monthly review of the technologists work by the radiation safety officer; (b) discussion of the inspection findings and licensed procedures to be followed on the weekends with the appropriate personnel; (c) institution of a policy of disciplinary action and (d) a doubling of the hours spent by the radiation safety officer attending to program activities. Based on the above actions, credit for *Corrective Action* was warranted.

Therefore, to emphasize that licensees must maintain control over licensed activities, especially on weekends when there may be less management presence, and the importance of avoiding complacency, and to ensure prompt identification of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice in the base amount of \$2,500 for the Severity Level III problem in Section I of the Notice. In addition, issuance of this Notice constitutes escalated enforcement action, that may subject you to increased inspection effort.

A letter also is being sent directly to the technologist concerning the violations in Section I of the Notice. You will receive a copy of this correspondence under separate cover.

The violations in Section II of the Notice involving the failure to perform accuracy and geometry dependence tests on the dose calibrator following installation, the failure to process personnel monitoring devices in a timely manner, the failure to maintain records of radiation safety committee meetings, the failure of the radiation safety officer to attend a radiation safety committee meeting, and the failure to conduct two radiation safety committee meetings in 1995, have been categorized as Severity Level IV violations in accordance with the Enforcement Policy. While these violations did not impact safety of the public, the patients, or your staff, they are indicative of a need for strengthening the oversight and control of the radiation safety program. Please include with your response to the Notice SMH's plan to improve the oversight and control of the licensed program and to ensure that program issues are identified, evaluated and resolved.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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).

Sincerely,

for
A. Bill Beach
Regional Administrator

Docket No. 030-18183
License No. 24-20274-01

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

St. Mary's Hospital of Blue Springs
Blue Springs, MO

Docket No. 030-18183
License No. 24-20274-01
EA 97-234

During an NRC inspection conducted on September 25, 1996, with continuing NRC review through November 13, 1996, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC 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 violations and associated civil penalty are set forth below:

I. Violations Assessed a Civil Penalty

- A. 10 CFR 35.50(b)(1) requires, in part, that a licensee check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use.

Contrary to the above, on July 6, 1996, August 3, 1996, and September 15, 1996, the licensee did not check the dose calibrator for constancy with a dedicated check source at the beginning of each day of use.

- B. 10 CFR 35.70(a) requires that a licensee survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

Contrary to the above, on numerous weekends between July 6, 1996 and September 26, 1996, the licensee did not survey with a radiation detection instrument at the end of the day areas where radiopharmaceuticals were routinely prepared for use or administered.

- C. 10 CFR 20.1906(b)(1) requires, in part, that each licensee monitor the external surfaces of a package labeled with a Radioactive White I, Yellow II, or Yellow III label for radioactive contamination.

Contrary to the above, on July 6, 1996, August 3, 1996, and September 15, 1996, the licensee received Radioactive White I labeled packages and did not monitor the external surfaces for radioactive contamination.

- D. Condition 16 of License No. 24-20274-01 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated May 13, 1993.

Notice of Violation and Proposed
Imposition of Civil Penalty

-2-

Item 10.7, paragraphs 2.c and 2.d, of the referenced application, entitled, "Procedures For Safely Opening Packages Containing Radioactive Material", requires all packages to be measured (for radiation) at three feet and at the surface.

Contrary to the above, on July 6, 1996, August 3, 1996, and September 15, 1996, the licensee did not measure (for radiation) each package at three feet and at the surface.

These violations represent a Severity Level III problem (Supplements VI & IV) Civil Penalty - \$2,500.

II. Violations Not Assessed A Civil Penalty

Condition 16 of License No. 24-20274-01 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated May 13, 1993.

- A. Item 9.4, paragraphs 2 and 3 of the referenced application entitled, Personnel External Exposure Monitoring Program, states, in part, film or thermoluminescent dosimeter (TLD) whole body monitor and film or TLD finger monitors issued to individuals will be processed by a contract service on a monthly basis.

Contrary to the above, two personnel monitors used for the periods of November 1995 and February 1996 were not processed until May 1996 and two personnel monitors used for the months of April 1995 and May 1995 were not processed until September 1995, periods which exceed one month.

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

- B. Item 10.1A, paragraph 8 of the referenced application, entitled, Medical Isotopes Committee, requires that the Radiation Safety Committee (RSC) maintain written records of all committee meetings, actions, recommendations, and decisions.

Contrary to the above, there were no written records of the RSC meeting held on June 6, 1996.

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

Notice of Violation and Proposed
Imposition of Civil Penalty

-3-

- C. 10 CFR 35.50(b)(2) and (4) require in part that, upon installation, a licensee test each dose calibrator for accuracy, and for geometry dependence over the range of volumes and volume configurations for which it will be used.

Contrary to the above, the licensee did not test the dose calibrator for geometry dependence or accuracy at the time of installation which occurred on December 13, 1995.

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

- D. 10 CFR 35.22(a)(2) requires that the Radiation Safety Committee meet at least quarterly.

Contrary to the above, the licensee's Radiation Safety Committee did not meet between February 1995 and November 1995, a period in excess of a calendar quarter.

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

- E. 10 CFR 35.22(a)(3) requires that to establish a quorum and conduct business, at least one half of the Radiation Safety Committee's membership must be present, including the Radiation Safety Officer and the management's representative.

Contrary to the above, on March 26, 1996, the licensee's Radiation Safety Committee met and conducted business and the Radiation Safety Officer was not present.

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

Pursuant to the provisions of 10 CFR 2.201, St. Mary's Hospital of Blue Springs 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 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 why the license should not be modified, suspended, or revoked or why such other action 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.

Notice of Violation and Proposed
Imposition of Civil Penalty

-4-

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: 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 III.

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

Notice of Violation and Proposed
Imposition of Civil Penalty

-5-

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 Lisle, Illinois
this 23rd day of July 1997

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

October 23, 1997

EA 97-258

E. Gordon Gee, Ph.D., President
The Ohio State University
Bricker Hall
Office of President
190 North Oval Mall, Room 205
Columbus, OH 43210-1357

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES-
\$13,000 and DEMAND FOR INFORMATION (Inspection Reports No. 030-
02640/96003(DNMS); and No. 030-02640/97001(DNMS) and OI Investigation
Report No. 3-96-041)**

Dear Dr. Gee:

This refers to the inspections conducted between June 1996 and April 1997, and the investigation conducted by the NRC Office of Investigations (OI) between August 1996 and May 1997 at The Ohio State University (OSU) in Columbus, Ohio. The inspection reports and the synopsis of the OI findings were sent to your staff by letters dated January 27, June 12, and July 10, 1997. On July 17, 1997, a transcribed predecisional enforcement conference was held in the NRC Region III office with members of the OSU staff to discuss the violations, their causes, and proposed corrective actions.

Based on the information developed during the inspection, the investigation, and the information provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice), and the circumstances surrounding them have been described in detail in the subject inspection reports.

The violations cited in Section I.A of the Notice involve failure to conduct physical inventories of brachytherapy and other sealed and unsealed sources and failure to dispose of accumulated radioactive waste. The violations involving failure to conduct physical inventories are directly repetitive of violations cited in the June 10, 1994 enforcement action against OSU. On numerous occasions since 1991, NRC inspectors have brought to the attention of your staff and to those who preceded your staff, violations and other concerns regarding deficiencies in the accountability and control of licensed material and the accumulation and long term storage of unusable radioactive material at OSU. Additionally, OSU self-assessments disclosed problems or suspected problems associated with the sealed source inventory and accountability programs including at least one known missing source, and with the long term storage of orphaned sources and uncharacterized waste. Notwithstanding these prior notices and self-assessments, known or

suspected problems were not adequately addressed in a timely manner, and certain problems were allowed to continue. The failure to correct known violations and known conditions with the potential to result in violations of NRC requirements are considered willful in that they represent a careless disregard for NRC regulations and license conditions by those responsible for program activities at OSU.

The NRC is corresponding directly with OSU's former radiation safety officer (RSO) concerning this issue. You will receive a copy of that correspondence under separate cover.

The OI investigation revealed that problems were not addressed because the radiation safety office did not have sufficient resources available. The resources that were available were used to handle more pressing program areas such as patient services and research activities. Although the resource problems which led to NRC violations were brought to the attention of OSU management, the problems were not corrected effectively. Moreover, the issue of willfully allowing violations to continue uncorrected because of resource deficiencies was the subject of an enforcement action that the NRC took against OSU in 1994.¹ The NRC stated in that enforcement action:

It is of particular concern that the [OSU] Audit Subcommittee clearly knew, by May 18, 1993, if not sooner, that there were specific directives in the University's new NRC license that the radiation safety staff had not been able to comply with completely, and that NRC had issued penalties at peer institutions for similar problems, and yet no action was taken by the subcommittee or the committee to curtail licensed activities as necessary to bring the remaining program into compliance, nor did committee or University officials contact the NRC to discuss the situation and determine a course of action. You should be aware that licensees who operate in knowing noncompliance of NRC requirements may be subject to significant enforcement sanctions including criminal sanctions. The radiation safety officer and the radiation safety committee must have authority to curtail activities as necessary and must exercise that authority to assure compliance at all times.

As part of the 1994 enforcement action, NRC requested that OSU develop and submit a Radiation Safety Improvement Plan that focused, in part, on assuring sufficient resources to prevent a recurrence of this problem. NRC made the Radiation Safety Improvement Plan a condition of OSU's license by Confirmatory Order dated November 8, 1994 (EA 94-215). However, the Radiation Safety Improvement Plan has failed to prevent the recurrence of similar willful violations, therefore, the NRC is issuing the Demand for Information set forth below.

The above failures are of significant safety and regulatory concern because of the potential for material to enter into the public domain and affect public health and safety. NRC relies on its

1. The NRC issued a Notice of Violation for a Severity Level II problem and a Severity Level III problem for a total \$17,750 civil penalty for a programmatic breakdown on June 10, 1994 (EA 94-032).

licensees, particularly those with broadscope programs of the magnitude of OSU's, to conduct licensed activities with integrity. Failure to implement timely and effective corrective actions for previously identified problems resulted in the violations discussed in Section I.A of the Notice. These violations represent a very significant regulatory concern and are classified in the aggregate in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level II problem.

The violations in Section I.B of the Notice involve the failure to make timely reports to the NRC. These violations are of regulatory concern because when notifications are not made as required, NRC cannot execute its regulatory responsibility in a timely manner. Therefore, these violations have been categorized in accordance with the Enforcement Policy as a Severity Level III problem.

The violations in Section I.C of the Notice involve the failure to secure and control licensed material. Each NRC licensee has the responsibility of protecting public health and safety by assuring that licensed material is secured and controlled from unauthorized removal. Failure to effectively control licensed material is of significant safety concern because this failure may result in an inadvertent release of radioactive material into the public domain. In this case, two packages containing licensed material have not been found and may be in the public domain. Therefore, these violations are categorized in accordance with the Enforcement Policy as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$4,000 is considered for a Severity Level II problem and a base civil penalty in the amount of \$2,500 is considered for a Severity Level III violation or problem. Because your facility has been the subject of escalated enforcement action in the last two inspections, 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.

As to the violations in Section I of the Notice, the NRC has determined that credit for identification is warranted since OSU identified problems with radioactive material inventory and waste storage that needed corrective action. The former RSO was aware of the existence of the inventory violation and other problems that likely represented violations; however, this individual, along with OSU management, did not take sufficient corrective action to address these problems upon learning of them. At the predecisional enforcement conference, your staff presented corrective actions taken and/or planned to address the violations. Those actions included: (1) creation of a full set of standard operating procedures in an effort to clarify program requirements for all users, (2) addition of resources to address radiation safety program and staff needs, (3) disposal of 2000 cubic feet of radioactive waste including numerous sealed sources, (4) implementation of an enforcement and sanction program for researchers that fail to follow requirements, and (5) heightened program oversight by the Offices of Business and Administration and Environmental Health and Safety. Although actions were taken to rectify program deficiencies, credit for *Corrective Action* is not warranted. Section VI.B.2.c of the Enforcement Policy states, "Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive." In this

case, such action was not taken and therefore, normally, a base civil penalty of \$4,000 would be proposed. However, the violations in Section I.A of the Notice reflect particularly poor performance. The RSO and management allowed the violations, some of which were repetitive, to continue after initial identification, demonstrating careless disregard for NRC requirements. Therefore, the NRC is exercising discretion in accordance with Section VII.A.1(g) of the Enforcement Policy and is proposing a civil penalty twice the base, or \$8,000 for the violations identified in Section I.A of the Notice.

Credit for *Identification* is not appropriate for the violations in Sections I.B and I.C because NRC identified Violations I.B.1, I.B.2, and I.C.1, and because both examples in Violation I.C.2, involving loss of licensed material, were essentially self-disclosing. Credit for *Corrective action* is appropriate for the violations in Sections I.B and I.C based on improvements in procedures for reporting to NRC and securing licensed materials outlined in your letter dated July 16, 1997, and as described at the predecisional enforcement conference.

Therefore, to emphasize: (1) the need for senior licensee management to provide sufficient oversight, direction, and resources to assure that Commission requirements are met; (2) the unacceptability of violations that represent careless disregard of NRC requirements; and (3) the need for prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, and the Acting Deputy Director for Regulatory Effectiveness, to issue the following proposed penalties which are addressed in the enclosed Notice of Violation and Proposed Imposition of Civil Penalties:

- A. Section I.A - Severity Level II problem at twice the base in the sum of \$8,000,
- B. Section I.B - Severity Level III problem at the base amount of \$2,500, and
- C. Section I.C - Severity Level III problem at the base amount of \$2,500.

The violations in Section II of the Notice include the failure to use the proper laboratory gear and equipment, the failure to evaluate the solubility of releases into the sanitary sewerage, release of insoluble material into the sanitary sewerage, failure to block and brace packages, and failure to appropriately place shipping papers in a transport vehicle. Each of these violations are of more than minor concern and have been categorized at Severity Level IV in accordance with the Enforcement Policy.

Demand for Information

In addition to the Notice of Violation and Proposed Imposition of Civil Penalties (NOV), the NRC is issuing this Demand for Information (DFI) because, as discussed above, the Radiation Safety Improvement Plan developed by OSU and required as a condition of OSU's NRC license failed to prevent recurrent willful violations caused by inadequate resources being devoted to the radiation safety program. Moreover, OSU has exhibited continued poor performance in the areas of radioactive material security, sealed source inventory and accountability, and disposal of stored radioactive waste; and has demonstrated significant deficiencies in its overall ability to effectively manage licensed activities. Therefore, in addition to the response required above,

the Commission requires further information concerning the ability of OSU to effectively conduct program activities as a broadscope licensee. Accordingly, pursuant to sections 81, 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 30.32(b), in order to determine whether further action should be taken to assure compliance with NRC regulatory requirements, OSU is required, pursuant to this Demand for Information, to submit to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, within 60 days of the date of this DFI, the following information, in writing and under oath or affirmation:

- A. Why should the NRC not take action to rescind the OSU broadscope license and issue in its place a limited, more restrictive license until NRC inspections of OSU demonstrate, over time, that OSU has the ability to manage a broadscope program?
- B. Why did the Radiation Safety Improvement Plan (RSIP) developed by OSU and required by NRC Confirmatory Order dated November 8, 1994 (EA 94-215) fail to prevent violations resulting from inadequate resources being devoted to the radiation safety program?
- C. In light of the past failures of the RSIP, why should NRC conclude that OSU will, in the future, comply with NRC requirements? Your response should consider specific changes OSU will effect as a result of the failures of the RSIP to assure that, in the future:
 - (1) adequate resources are devoted to the radiation safety program;
 - (2) violations of NRC requirements, or problems that could lead to violations, that are known to the radiation safety officer or other OSU managers are not allowed to continue uncorrected; and
 - (3) in the event that adequate resources are not available, the radiation safety officer and the radiation safety committee, both individually and collectively, have sufficient authority and direction to exercise that authority so as to curtail activities as necessary to assure compliance at all times.

In response to C. above, you should provide your views concerning the need for a permanent procedure or process to periodically (such as quarterly) poll the radiation safety officer and other key personnel to determine whether they are aware of any current or potential violations of NRC requirements, whether caused by lack of resources or otherwise; consider and record their responses at meetings of the radiation safety committee; forward the responses and the committee's action on them to upper OSU management, and establish actions that must be taken, and individuals responsible for taking them, to assure that the steps in C(3) are taken when necessary. You should also provide your views concerning the need for periodic outside audits to provide confidence to OSU senior management that resources are adequate and that NRC requirements are being met by OSU.

You are required to respond to this letter and should follow the instructions specified above in responding to the DFI and the instructions in the enclosed NOV when preparing your response to the NOV. After reviewing your responses, 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 requirements. Because the issuance of this Notice constitutes escalated enforcement action, OSU may be subjected to increased inspection effort. Finally, we note that, were it not for the corrective actions that OSU put into place between the inspections at issue and the predecisional enforcement conference, the NRC would have considered more stringent enforcement action.

Questions concerning this Demand for Information should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

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. 030-02640
License No. 34-00293-02

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalties

cc w/encl:
Alex Shumate, Chairman
Bricker Hall
Board of Trustees
190 North Oval Mall, Room 19
Columbus, OH 43210-1356

Janet G. Pichette
Vice President for Business
and Administration
The Ohio State University
108 Bricker Hall
190 North Oval Mall
Columbus, OH 43212-1362

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTIES

The Ohio State University
Columbus, Ohio

Docket No. 030-02640
License No. 34-00293-02
EA 97-258

During NRC inspections conducted between June 1996 and April 1997 and an investigation conducted between August 1996 and May 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC proposes to impose civil penalties 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 violations and associated civil penalties are set forth below:

I. Violations Assessed Civil Penalties

A. Control of Licensed Material

1. 10 CFR 35.59(g) requires, in part, that a licensee in possession of a sealed source or brachytherapy source conduct a quarterly physical inventory of all such sources in its possession.

Contrary to the above, the licensee did not conduct a physical inventory of four brachytherapy sources that were in storage and not in use from October 8, 1993 to April 4, 1994, at which time the sources could not be located. (01012)

2. Condition 15 of License No. 34-00293-02, amendment #71 dated June 29, 1992, requires that the licensee conduct a physical inventory every 3 months to account for all sources and/or devices received and possessed pursuant to 10 CFR 35.59, 10 CFR 35.400 and 10 CFR 35.500 and every 6 months for all other sources and/or devices. Amendment #74 dated July 2, 1993 requires, in part, that the licensee conduct a physical inventory every six months for all other sealed and unsealed sources and/or devices.

Contrary to the above, between June 29, 1992, and April 5, 1996, six sealed sources other than those possessed pursuant to 10 CFR 35 were not physically inventoried every 6 months. Specifically: (1) a 22 millicurie cesium-137 sealed source was not physically inventoried from approximately June 1993 until it was identified as missing in June 1994; (2) an 8 millicurie americium-241 sealed source was not physically inventoried between June 29, 1992, and April 21, 1994, and between December 23, 1994, and March 29, 1996; and (3) four cobalt-60 sealed sources ranging in activity from approximately 0.4 millicuries to 2 millicuries were not physically inventoried from June 29, 1992, until April 3, 1996. Additionally, a physical inventory of unsealed sources was not performed between 1994 and July 1996. (01022)

3. Condition 20 of License No. 34-00293-02, amendment # 71, dated June 29, 1992, requires that radioactive waste awaiting disposal via shipment to a final disposal site not be stored for a period greater than 2 years. Condition 21, amendment #71, requires that waste currently possessed exceeding the storage provisions of Condition 20 be disposed of within one year of the issuance of this license. (The license was amended in its entirety (issued) on June 29, 1992).

Contrary to the above, radioactive waste possessed by the licensee and waiting to be characterized and disposed via shipment to a final disposal site was stored within the Bulk Chemical Warehouse and Corrosive Storage Bunkers from at least the inception of the requirement in June 1992 through July 1996. This exceeds the storage time limitations of both Conditions 20 and 21. (01032)

These violations represent a Severity Level II problem (Supplement VI).
Civil Penalty - \$8,000.

B. Reporting Requirements

1. 10 CFR 20.2201 (a)(i) and (ii) require, in part, that each licensee report by telephone to the NRC, immediately after its occurrence becomes known, any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in appendix C to Part 20, under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas; or within 30 days after it becomes known that any material in quantities greater than 10 times the quantity specified in appendix C to part 20 is lost, stolen or missing.

Contrary to the above, on two occasions, the licensee failed to make an immediate telephone report or a 30 day report to the NRC that licensed material in an aggregate quantity greater than 1,000 times the quantity specified in appendix C to 10 CFR 20 was missing. Specifically, in April 1994, four cesium-137 brachytherapy sealed sources totaling approximately 35 millicuries were identified as missing, and in June 1994, one 12 millicurie cesium-137 sealed source was also identified by the licensee as missing, and in neither case did the licensee make an immediate report or a 30 day report to the NRC. (02013)

2. Condition 15 of License No. 34-00293-02, amendment #53 dated April 2, 1982 and Condition 13, amendment #71 dated June 29, 1992 require, in part, that if a leak test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall file a report to the NRC within five days of the test describing the equipment involved, the test results, and the corrective action taken.

Contrary to the above, as of June 24, 1996, the licensee failed to file a report with the NRC regarding a sealed source which was leaking in excess of regulatory limits. Specifically, on March 25, 1991, a sealed source containing a nominal activity of 8 millicuries of americium-241 was identified to have greater than 0.005 microcuries of removable contamination and the licensee did not file the required report with the NRC. (02023)

These violations represent a Severity Level III problem (Supplement IV).
Civil Penalty - \$2500.

C. Security of Radioactive Material

1. 10 CFR 20.1801 requires, in part, that the licensee secure from unauthorized removal or access licensed material that is stored in unrestricted areas. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on the evenings of June 25, 27, and December 3, 1996, the licensee did not secure from unauthorized removal or limit access to licensed material stored in unrestricted areas. Specifically, licensed material totaling approximately 15 millicuries of sulfur-35, 15 millicuries of carbon-14, 10 millicuries of tritium and 250 microcuries of phosphorus-32 was stored in six research laboratories located in the Biological Science building, Graves Hall, and Medical Research Facility. The material was not secured from unauthorized removal nor was access to it limited by the licensee. (03013)

2. 10 CFR 20.1802 requires, in part, that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on February 26 and March 28, 1997, the licensee did not maintain control and constant surveillance of two packages containing licensed material located in an unrestricted area. Specifically, on two separate occasions a package containing 250 microcuries of phosphorus-32 was left unattended and unsecured in the receiving department and subsequently within an unlocked transport vehicle. Both packages were lost or stolen and could not be located. (03023)

These violations represent a Severity Level III problem (Supplement IV).
Civil Penalty - \$2500.

II. Violations Not Assessed a Civil Penalty

- A. Condition 40 of License No. 34-00293-02 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in applications dated July 29, 1986 and February 21, 1991, and several referenced letters.

Item 15 of the application dated July 29, 1986, entitled "General Rules for The Safe Use Of Radioactive Material" requires that all laboratory procedures in the Approved Supervisor's approved application for the use of radioactive materials be followed. Item 15 also requires that laboratory coats and disposable gloves be worn.

The experimental protocol (lab procedure) for "In Vivo Phosphorylation of Cells and Explants" submitted by an Approved Supervisor applicant and approved by the Radiation Safety Committee requires, in part, that workers use double gloves. The procedure also specifies that tissue samples be placed into screw cap flasks with 3 milliliters of media and 3 millicuries of P-32.

Contrary to the above, a researcher did not follow all approved laboratory procedures during the in vivo cell phosphorylation experiment. Specifically, on March 6, 1996, a researcher conducted an experiment using a snap-type cap and vial which contained 2.5 millicuries of phosphorus-32. During the experiment, pressure buildup caused the snap cap to be expelled and contaminate the experimental apparatus. In addition, gloves and a lab coat were not worn while handling the vial which resulted in contamination to the skin of the researcher's right hand during retrieval of the vial cap. (04014)

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

- B. 10 CFR 20.1501 requires that each licensee make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation levels, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present. Pursuant to 10 CFR 20.1003, *survey* means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

10 CFR 20.2003(a)(1) requires that licensed material discharged into the sanitary sewerage system be readily soluble or readily dispersible biological material in water.

Contrary to the above: (1) the licensee did not make surveys (evaluations) to assure compliance with 10 CFR 20.2003(a)(1), which limits the disposal of licensed material by release into the sanitary sewerage system to readily soluble or readily dispersible biologic material; and (2) the licensee discharged small quantities of licensed material that was not readily soluble or readily dispersible biological material into the sanitary sewer. Specifically, from January 1994 to

August 1996, based on the results of an evaluation conducted in August and September 1996, the licensee discharged 1.21 millicuries of H-3, 0.35 millicuries of C-14 and approximately 0.5 millicuries of I-125, in insoluble form, into the sanitary sewer. (04024)

This is a Severity Level IV violation (Supplement IV).

- C. 10 CFR 71.5(a) requires, in part, that a licensee who transports licensed material outside the site of usage as specified on the NRC license, or on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 177.842 requires, in part, that packages of radioactive materials be so blocked or braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, between January 1995 and June 25, 1996, the radiation safety office routinely transported DOT labeled packages containing varying quantities and types of radioactive material from the Ohio State University receiving dock to various campus research buildings on public highways and, on numerous occasions, the packages were not blocked and braced within the transport vehicle such that they could not change position during conditions normally incident to transportation. (04034)

This is a Severity Level IV violation (Supplement V).

- D. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside the site of usage as specified on the NRC license, or on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 177.817(e) requires, in part, that the driver of a motor vehicle containing hazardous material ensure that the shipping paper is readily available to, and recognizable by, authorities in the event of accident or inspection. Specifically, the driver shall clearly distinguish the shipping paper, if it is carried with other shipping papers or other papers of any kind, by either distinctively tabbing it or by having it appear first.

Contrary to the above, between January 1995 and June 25, 1996, the radiation safety office routinely transported radioactive material packages from the Ohio State University receiving dock to various campus research buildings on public highways, and the driver of the vehicle did not ensure that the shipping paper was clearly distinguished from other documents carried in a binder within the transport vehicle. (04044)

This is a Severity Level IV violation (Supplement V).

Pursuant to the provisions of 10 CFR 2.201, The Ohio State University (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 60 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalties (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 action 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 penalties 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 penalties, 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 penalties will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) 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 penalties should not be imposed. In addition to protesting the civil penalties, in whole or in part, such answer may request remission or mitigation of the penalties.

In requesting mitigation of the proposed penalties, 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 civil penalties.

Upon failure to pay any civil penalties 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 penalties, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234(c) of the Act, 42 U.S.C. 2282c.

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

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 Lisle, Illinois
this 23rd day of October 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

November 17, 1997

EA 97-425

Mr. Larry Davidson
President and Chief Executive Officer
The Terracon Companies, Inc.
16000 College Boulevard
Lenexa, Kansas 66219

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$5,000 (Inspection Report No. 030-32176/97-01 & Investigation
Report 4-97-010)

Dear Mr. Davidson:

This refers to the predecisional enforcement conference conducted with 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. The NRC's review of these issues, which included an inspection and an investigation by the NRC's Office of Investigations (OI), was completed on October 1, 1997, when we conducted a final telephonic exit interview with Terracon. 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 violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty. The violations involve a deliberate failure to assure that individuals received formal training prior to using portable nuclear gauges, as Terracon committed to in its NRC license application, and a failure to transport gauges in accordance with Terracon's procedures.

With regard to the training issue, the NRC acknowledges Terracon's position that operators were provided in-house training, including some training regarding radiation safety, prior to using gauges. 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 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 Terracon chose for business reasons to violate this requirement. 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.

In accordance with the Enforcement Policy, a civil penalty with a base value of \$2,500 is considered for a Severity Level III violation.¹ Because the violation was willful, the NRC considered both *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in VI.B.2 of the Enforcement Policy.

This violation was identified by the NRC, thus no credit for identification is warranted. With regard to corrective action, you informed us at the conference that you had taken prompt action to correct this violation, including reminding all of your field offices by memorandum that formal training was required, modifying your Kansas (Agreement State) license to permit Terracon to conduct in-house training in lieu of the manufacturer's training course, and providing additional assistance to the Lenexa, Kansas radiation safety officer to perform tasks associated with maintaining compliance with licensed requirements. Following the conference, you provided us copies of memoranda issued to Terracon's field offices addressing this violation and other related topics. While these actions are acceptable, the NRC finds them lacking in two respects: 1) you do not appear to have emphasized to all employees involved in licensed activities the unacceptability of deliberately violating NRC requirements; and 2) it appears that your compliance program is primarily reactive (i.e., in response to violations or incidents) as opposed to assuring compliance through a more formal audit program. Thus, the NRC has determined that credit for corrective actions is not warranted. This assessment results in a civil penalty at twice the base value.

Therefore, to emphasize the importance of strict compliance with licensed commitments and requirements, and the unacceptability of willful noncompliance, 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 amount of \$5,000.

The second violation, involving improperly transporting a portable nuclear gauge in the cab of a vehicle, has been classified at Severity Level IV and is not being assessed a civil penalty. You also provided us information at the conference regarding the corrective actions taken for this violation, including providing your field offices with specific instructions for maintaining compliance with transportation requirements.

Terracon is required to respond to this letter and Notice and should follow the instructions specified in the enclosed Notice when preparing its 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.

¹This is the base value that was in effect at the time the violations occurred in 1995; it has since been increased to \$2,750.

The Terracon Companies, Inc.

- 3 -

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 Ellis W. Merschoff
Regional Administrator

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

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

cc w/Enclosure:
State of Kansas

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

The Terracon Companies, Inc.
Lenexa, Kansas

Docket No. 030-32176
License No. 15-27070-01
EA 97-425

During an NRC inspection and investigation completed October 1, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, 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 are set forth below:

I. Violation Assessed a Civil Penalty

Condition 18A of NRC Materials license 15-27070-01 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 RSO.

Contrary to the above, on at least three occasions in 1995, the licensee permitted licensee employees to possess or operate sealed source nuclear gauges although such employees had not completed a manufacturer's operator safety/training course.

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

II. Violation Not Assessed a Civil Penalty

Condition 18A of NRC Materials license 15-27070-01 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 "During transportation, all gauges will be fully secured in the vehicle and located as far from personnel as possible."

Contrary to the above, since December 9, 1991, a gauge operator routinely carried sealed source nuclear gauges in the passenger cab of his vehicle whenever he had to transport these gauges in the rain.

This is a Severity Level IV violation (Supplement V).

Pursuant to the provisions of 10 CFR 2.201, The Terracon Companies, Inc., (Licensee) 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 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 the 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 why the license should not be modified, suspended, or revoked or why such other action 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 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 violation 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: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with copies to the Regional

Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 12, 1997

EA 97-350

Jimmy C. Morgan, Director
Armament and Chemical Acquisition
and Logistics Activity (ACALA)
U.S. Army Tank-Automotive and
Armaments Command
Rock Island, IL 61299-7630

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$16,000 (NRC Inspection Report Nos. 030-13027/97001(DNMS);
030-21073/97001(DNMS), and 030-22274/97001(DNMS))

Dear Mr. Morgan:

This refers to the NRC inspections conducted between December 9, 1996 and March 28, 1997, of activities authorized at the U. S. Department of the Army's Ft. Bragg, NC; Rock Island, IL; Ft. Leonard Wood, MO; Anniston, AL; Ft. Devens, MA; and Rhode Island National Guard facilities. As described in the NRC inspection reports sent to you by letter dated April 11, 1997, thirteen apparent violations of NRC requirements were identified. On August 8, 1997, a predecisional enforcement conference was held with Major General Beauchamp, you and other U.S. Army representatives to discuss the violations, their causes, and your corrective actions. In addition, ACALA's progress with the assistance of the Department of the Army, in completing the action items described in a Confirmatory Order Modifying License (Order) issued to the ACALA on March 26, 1997, was discussed.

Based on the information developed during the inspection, the information provided during the conference, and the information provided in the ACALA's June 15, 1997 and September 9, 1997 responses to the Order, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. In particular, the violations include failures to: (1) conduct annual inspections at all named Army depots, (2) provide training to users of licensed materials, (3) ensure that tests for leakage and/or contamination were performed by persons specifically authorized to perform that service, (4) conduct inventories of licensed commodities annually, (5) conduct surveys to demonstrate compliance with personnel/public exposure limits contained in 10 CFR Part 20, (6) secure licensed material in storage from unauthorized access or removal, (7) properly prepare a package containing radioactive material for shipment, (8) notify the local Radiation Protection Officer of non-illuminated or damaged fire control devices containing tritium and place defective fire control devices in plastic bags, (9) properly set the pressure level for purging of fire control devices, that resulted in damage to

the device and release of tritium gas, (10) limit storage of damaged fire control devices to unoccupied buildings, (11) limit repair/maintenance activities on tritium-containing fire control devices, (12) provide notification to NRC of incidents pursuant to 10 CFR 20.2201 (immediate), and (13) provide notification pursuant to 10 CFR 30.50 (24 hour). Many of these violations involved multiple examples.

The violations impact nearly every aspect of your radiation protection program. The number and nature of the violations are indicative of a continued breakdown in the control of licensed responsibilities. Ten of the thirteen violations were repeat violations, having been previously identified during four NRC inspections conducted in 1992, 1993 and 1995. During those inspections, a total of 21 violations were identified. This inspection determined that the Army's implementation of previous corrective actions, especially for the 1992 inspection findings, for which six of seven violations were identified as repetitive during this inspection, had been ineffective in precluding similar violations from recurring.

Safety significant, repeat violations were identified for the failure to properly store damaged tritium devices. During two incidents, one at Camp Kineohe and the other at Ft. Campbell, known damaged M1A1 collimators were stored in occupied offices for extended periods of time. During those periods of storage, the damaged devices continued to off-gas tritium, resulting in facility contamination, and unnecessary exposure of personnel. These events had the potential to result in significant intakes of tritium that could have resulted in exposures in excess of regulatory limits.

Violations were also identified for failure to make timely notifications of events, such as those discussed above. Ten examples were identified, several of which the NRC likely would have dispatched inspectors to follow up. The failure to notify the NRC impacted the NRC's ability to fulfill its regulatory responsibilities.

Furthermore, fundamental commitments regarding accountability for licensed material were not met. The Army was not able to determine the quantity of licensed material in its possession or determine with any certainty all locations of possession and use. It appeared that ACALA had requested arbitrarily inflated possession limits in order to preclude the likelihood of exceeding those limits. The large possession limits notwithstanding, the NRC expects its licensees to be able to account for all radioactive materials possessed under their licenses.

ACALA's continued failure to effectively manage its licensed radiation safety program is a very significant safety and regulatory concern to the NRC. The NRC entrusts you with the responsibility for radiation safety within the Department of Defense for the items authorized under your NRC licenses. Incumbent upon you is the responsibility to protect public health and safety, including the health and safety of military and civilian personnel, by assuring that all NRC requirements are met and any potential violations are identified and promptly corrected. The repetitive nature of the violations and your relatively poor past performance demonstrate continued severe programmatic deficiencies and the lack of management oversight. Therefore, the violations in Section A of the Notice addressing ACALA's failures regarding inspections, procedures, maintenance, training, leak tests, inventories, surveys, security, and

November 12, 1997

shipping are classified in the aggregate in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level II problem. The violations in Section B of the Notice addressing ACALA's failures to make timely notifications, are also classified in the aggregate as a Severity Level II problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$8000 is considered for a Severity Level II problem. Because the Army has been the subject of escalated enforcement actions within the last two inspections,¹ 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. No credit is warranted for *Identification* due to the fact that seven of the thirteen violations identified during the inspection were identified by the NRC. Credit for *Corrective Action* is warranted. The Army's corrective actions were confirmed in the March 26, 1997, Order. The corrective actions described in the Order were initially agreed upon during the exit meeting conducted on January 31, 1997. The first milestone in the Order required the Army to have an independent audit conducted within 30 days of NRC's approval of the audit plan. The audit plan was approved by NRC on April 17, 1997, and subsequently the audit was conducted, as required. The audit report, dated June 16, 1997, included a comprehensive root cause analysis. Subsequent actions, involving development and implementation of long-term corrective actions for audit findings, were addressed in a letter to the NRC dated September 9, 1997. The corrective actions include restructuring the Army's radiation safety program, improving the procedures for annual inventories, improving and consolidating the audit criteria and schedule, upgrading training requirements, revising Technical Manuals to include NRC reporting requirements, creating and distributing additional information concerning safe handling, maintenance, storage and disposal of radioactive material, reducing or eliminating radioactive sources containing tritium, and ensuring adequate staffing in the safety office.

Therefore, to emphasize the importance of lasting and effective corrective action, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the base amount of \$8000 for each of the two Severity Level II problems. This is a total Civil Penalty of \$16,000. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

¹ December 28, 1993 - Civil penalty, in the amount of \$17,500, for a significant breakdown in the control of NRC licensed activities, identified as a result of an inspection conducted October 19 to November 9, 1993, at the Marine Corps Logistics Base (MCLB), Barstow, California.

November 12, 1997

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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).

Sincerely,

for James F. Caldwell
A. Bill Beach
Regional Administrator

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalties

Docket Nos. 030-13027
030-21073
030-22274

License Nos. 12-00722-06
12-00722-13
12-00722-14

cc: Major General Roy E. Beauchamp, Commander
U.S. Army Tank-Automotive and Armament Command
ATTN: AMSTA-CG
Warren, MI 48397-5000

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTIES

U.S. Army	Docket Nos.	030-13027
Tank-Automotive and		030-21073
Armaments Command		030-22274
Armament and Chemical	License Nos.	12-00722-06
Acquisition and Logistics		12-00722-13
Activity		12-00722-14
Rock Island, Illinois	EA 97-350	

During an NRC inspection conducted on December 9, 1996 through March 28, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC proposes to impose civil penalties 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 violations and associated civil penalties are set forth below:

A. Radiation Safety Program Issues

1. Condition 17. of License No. 12-00722-06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in a letter dated August 24, 1984, an application dated November 6, 1988, and other referenced documents.

The August 24, 1984, letter states that, annually, the licensee will inspect storage, inventory, and distribution of licensed items at each named depot as well as each depot radiation safety program. Condition 11.A. of License No. 12-00722-06 lists the named depots, which included Letterkenny Army Depot, Anniston Army Depot, Red River Army Depot, Rock Island Arsenal, New Cumberland Army Depot, Sharpe Army Depot, Marine Corps Logistics Base-Albany, Georgia, and Marine Corps Logistics Base-Barstow, California.

Contrary to the above, between January 1, 1996, and December 31, 1996, the licensee did not inspect storage, inventory, and distribution of licensed items at each named depot nor did the licensee inspect radiation safety programs at Rock Island Arsenal, Letterkenny Army Depot, Anniston Army Depot, Red River Army Depot, New Cumberland Army Depot, Sharpe Army Depot, and Marine Corps Logistics Base-Barstow, California. (01012)

This is a repeat violation which was previously identified during the July 24 - August 11, 1995, NRC inspection.

2. Condition 12. of License No. 12-00722-06 requires that licensed material be used by, or under the supervision of, named individuals, or U.S. Army and Marine Corps civilian and/or military personnel trained in accordance with the application dated April 12, 1982. Enclosure 3 to Supplement 1 of the referenced

application states, in part, that users of radioactive commodities are trained to use the equipment in accordance with published technical manuals.

Contrary to the above, as of October 30, 1996, the licensee did not adequately train soldiers at Ft. Bragg, North Carolina, who used the M224 mortar to use the equipment in accordance with the published Technical Manual, TM 9-1010-223-20&P, for that device. Specifically, the soldiers were not instructed that removal of the range indicator from the firing mechanism assembly on an M224 mortar was prohibited, and they removed the range indicator. (01022)

This is a repeat violation which was previously identified during the June 5 - August 17, 1992, and July 24 - August 11, 1995, NRC inspections.

3. Condition 12.D. of License No. 12-00722-13 and Condition 14.D. of License No. 12-00722-14 require that tests for leakage and/or contamination be performed by the licensee or by other persons specifically licensed by the Commission or an Agreement State to perform such services.

Contrary to the above, as of March 28, 1997, tests for leakage and/or contamination on M43A1s, containing 250 microcuries of americium-241, and Chemical Agent Monitors, containing 10 millicuries of nickel-63, were routinely performed by the Rock Island Arsenal and Anniston Army Depot, persons not specifically licensed by the Commission or an Agreement State to perform such services. (01032)

4. Condition 15. of License No. 12-00722-06 requires that the licensee conduct a physical inventory of muzzle reference sensors, containing nominally 10 curies of tritium each, every 12 months to account for all sealed sources received and possessed under the license.

Conditions 15. of License Nos. 12-00722-13 and 12-00722-14 require that the licensee conduct a physical inventory every 12 months to account for material possessed under the licenses.

Contrary to the above, as of March 28, 1997, the licensee had never conducted a physical inventory of muzzle reference sensors to account for all sealed sources received and possessed under License No. 12-00722-06. Furthermore, the licensee had not conducted a physical inventory to account for all material possessed under License Nos. 12-00722-13 and 12-00722-14 since 1995. (01042)

This is a repeat violation which was previously identified during the October 19 - November 9, 1993, NRC inspection.

5. 10 CFR 20.1501(a) requires, in part, that each licensee make, or cause to be made, surveys that may be necessary for the licensee to comply with the regulations in 10 CFR Part 20 and are reasonable under the circumstances to evaluate the potential radiological hazards that could be present.

Pursuant to 10 CFR 20.1003, *survey* means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

Contrary to the above, as of March 28, 1997, the licensee did not make surveys to assure compliance with 10 CFR 20.1201, which limits radiation exposure to adult occupational workers. Specifically, from September 6 through November 7, 1995, U.S. Marines, located at Camp Kineohe, Hawaii, repeatedly handled a damaged source containing 10 curies of tritium gas, and the licensee did not make, or cause to be made, surveys necessary and reasonable to determine the radiation exposure of the individuals involved. (01052)

This is a repeat violation which was previously identified during the June 5 - August 17, 1992, NRC inspection.

6. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. Unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on numerous occasions the licensee did not secure from unauthorized removal or access licensed materials that were stored in controlled or unrestricted areas. Specifically:

- a. Between February 9, 1995, and June 15, 1995, the licensee did not secure from unauthorized removal or access licensed materials, consisting of 18 M43A1 chemical agent detectors, each containing 250 microcuries of americium-241 as a plated foil, that were stored in a general storage area on Johnston Atoll, an unrestricted area.
- b. The licensee did not secure from unauthorized removal or access an M43A1 chemical agent detector containing 250 microcuries of americium-241 that was stored in an unrestricted area at Ft. Irwin, California. The licensee became aware that the material was lost on March 28, 1996;
- c. The licensee did not secure from unauthorized removal or access a M140 alignment device containing 3.0 curies of tritium and that was stored in an unrestricted area at Ft. Irwin, California. The licensee became aware that the material was lost on May 30, 1996;

d. The licensee did not secure from unauthorized removal or access an M43A1 chemical agent detector containing 250 microcuries of americium-241 and that was stored in an unrestricted area at Ft. Carson, Colorado. The licensee became aware that the material was lost on August 28, 1996. (01062)

7. 10 CFR 71.5(a) requires, in part, that each licensee who delivers licensed material to a carrier for transport to comply with the Department of Transportation (DOT) regulations in 49 CFR Parts 170 through 189 appropriate to the mode of transport.

49 CFR 173.475 requires, in part, that before each shipment of any Class 7 (radioactive) materials package, the offeror must ensure by examination or appropriate tests, that the external radiation and contamination levels are within the allowable limits in 49 CFR Parts 171-178. 49 CFR 173.443(a) requires, in part, with exceptions not applicable here, that for beta and gamma emitting contaminants, the level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for transport, at the beginning of transport, not exceed 0.4 Becquerel per square centimeter (22 disintegrations per minute per square centimeter) on any single wiping material, determined by wiping an area of 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and averaging over the surface wiped. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the non-fixed contamination levels.

Contrary to the above, on November 7, 1995, the licensee delivered to a carrier for transport a package which contained 10 curies (370 GBq) of hydrogen-3, and the licensee did not make sufficient measurements to assess the non-fixed contamination level prior to offering the package for transport.

Condition 17. of License No. 12-00722-06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in a letter dated August 24, 1984, an application dated November 6, 1988, and other referenced documents. Item 10.b. of the November 6, 1988, application states that users of devices containing tritium illumination devices are required to utilize and maintain each device in accordance with military regulations and technical manuals issued.

8. U.S. Army Technical Manual TM 9-1240-324-34&P, also known as U.S. Marine Corps TM 04914B-34&P, for the M1A1 infinity aiming reference collimator, NSN 1240-00-332-1780, states in Chapter 1, Section I (10)(b)(3), that if the tritium source is cracked, or if no illumination in the device is observed, personnel are to contact the local Radiation Protection Officer and seal the collimator in double plastic bags.

Contrary to the above, on June 13, 1996, soldiers at the Indiana National Guard facility at Kempton, Indiana, determined that the tritium source on an M1A1 was cracked and did not seal the collimator in double plastic bags. In addition, on

September 6, 1995, marines at Camp Kineohe, Hawaii, determined that the tritium source on an M1A1 infinity aiming reference collimator was cracked and they did not notify the local Radiation Protection Officer, and on April 7, 1995, a soldier at Ft. Campbell, Kentucky, determined that the tritium source on an M1A1 was cracked and did not seal the collimator in double plastic bags. (01082)

This is a repeat violation which was previously identified during the June 5 - August 17, 1992, NRC inspection.

9. U.S. Army Technical Manual TM 750-116, General Procedures for Purging and Charging of Fire Control Instruments, which includes the M1A1 infinity aiming reference collimator, states in Chapter 3, Section II, Subsection 3-4, that in order to purge the collimator, personnel are to maintain nitrogen pressure at 3 pounds per square inch (psi) for 5 minutes.

Contrary to the above, on June 13, 1996, soldiers at the Indiana National Guard facility at Kempton, Indiana, used nitrogen gas at a pressure in excess of 5 psi during purging operations on an M1A1, resulting in damage to the tritium source. Other examples of over purging M1A1 collimators were identified by the licensee at Ft. Riley, Kansas, on October 9, 1996; at Ft. Bragg, North Carolina, on September 27, 1996; at Ft. Drum, New York, on July 28, 1996; at U.S. Marine Corps Reserve facility in Joliet, Illinois, on June 24, 1996; at Camp Lejeune, North Carolina, in March 1996; and at Ft. Shafter, Hawaii, on January 29, 1996.

In addition, on April 7, 1995, a soldier at Ft. Campbell, Kentucky, used nitrogen gas at a pressure in excess of 3 psi during purging operations on an M1A1, resulting in damage to the tritium source. (01092)

This is a repeat violation which was previously identified during the June 5 - August 17, 1992, NRC inspection.

10. U.S. Army Technical Manual TM 9-1240-324-34&P, also known as U.S. Marine Corps TM 04914B-34&P, for the M1A1 infinity aiming reference collimator, NSN 1240-00-332-1780, states in Chapter 2, Section IV, Subsection 2-16 (b)(5), that the M1A1 shall not be stored in inhabited or unventilated buildings.

Contrary to the above, from September 6, 1996, to November 7, 1996, an M1A1 with a damaged tritium source was stored at a desk located in the optical maintenance shop at Camp Kineohe, Hawaii, an inhabited building. In addition, from April 7, 1995, to May 11, 1995, an M1A1 with a damaged tritium source was stored at the "Smokes office," located at Ft. Campbell, Kentucky, an inhabited building. (01102)

This is a repeat violation which was previously identified during the June 5 - August 17, 1992, NRC inspection.

11. U.S. Army Technical Manual TM 9-1010-223-20&P, for the M224 mortar, states in Chapter 1, Section III, Subsection 1.11 (a)(b), that maintenance of the mortar at the user level consists of the replacement of modules and that the mortar has one replaceable module, the handle and firing mechanism assembly. Included in the assembly is the range indicator, the firing selector, and the trigger. Maintenance instructions contained in Chapter 2 of the TM do not authorize removal of the range indicator from the firing mechanism assembly.

Contrary to the above, on October 30, 1996, soldiers at Ft. Bragg, North Carolina, removed the range indicator from the firing mechanism assembly on an M224 mortar. (01112)

This is a repeat violation which was previously identified during the June 5 - August 17, 1992, NRC inspection.

These violations represent a Severity Level II problem (Supplements IV & VI).
Civil Penalty - \$8000.

B. Event Reporting

1. 10 CFR 20.2201(a)(1)(I) requires that each licensee report to the NRC Operations Center by telephone immediately after the licensee becomes aware of any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1.0 microcurie for americium-241, or 1.0 curie for tritium (each of which is 1000 times the quantity specified in Appendix C to Part 20), under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas.

Contrary to the above, as of March 28, 1997, and on numerous occasions, the licensee did not report to the NRC Operations Center immediately after the licensee became aware that quantities of americium-241 in excess of 1.0 microcurie and tritium in excess of 1.0 curie (each of which is 1000 times the quantity specified in Appendix C to Part 20) were lost or missing. Specifically:

- a. On December 10, 1996, the licensee became aware of the loss of 12 muzzle reference sensors, each containing 10 curies of tritium, at Ft. Knox, Kentucky, under such circumstances that an exposure could have resulted to persons in unrestricted areas, and the licensee did not report the occurrence to the NRC until January 29, 1997;
- b. On August 28, 1996, the licensee became aware of the loss of 250 microcuries of americium-241, contained in an M43A1 chemical agent detector, at Ft. Carson, Colorado, under such circumstances that an exposure could have resulted to persons in unrestricted areas, and the licensee did not report the occurrence to the NRC until January 31, 1997;

- c. On July 31, 1996, the licensee became aware of the loss of 10 curies of tritium, contained in a muzzle reference sensor, at Ft. Drum, New York, under such circumstances that an exposure could have resulted to persons in unrestricted areas, and the licensee did not report the occurrence to the NRC until January 31, 1997;
- d. On July 16, 1996, the licensee became aware of the loss of 18 M43A1 devices, each containing 250 microcuries of americium-241, at Johnston Atoll, under such circumstances that an exposure could have resulted to persons in unrestricted areas, and the licensee did not report the occurrence to the NRC until July 19, 1996;
- e. On June 3, 1996, the licensee became aware of the loss of 3.0 curies of tritium, contained in an M140 alignment device, at Ft. Irwin, California, under such circumstances that an exposure could have resulted to persons in unrestricted areas, and the licensee did not report the occurrence to the NRC until January 31, 1997;
- f. On March 28, 1996, the licensee became aware of the loss of 250 microcuries of americium-241, contained in an M43A1 chemical agent detector, at Ft. Irwin, California, under such circumstances that an exposure could have resulted to persons in unrestricted areas, and the licensee did not report the occurrence to the NRC until January 31, 1997;
- g. On December 7, 1995, the licensee became aware of the loss of 10 curies of tritium, contained in a muzzle reference sensor, at Ft. Riley, Kansas, under such circumstances that an exposure could have resulted to persons in unrestricted areas, and the licensee did not report the occurrence to the NRC until January 31, 1997;
- h. On October 26, 1994, the licensee became aware of the loss of 10 curies of tritium, contained in a muzzle reference sensor, at Ft. Knox, Kentucky, under such circumstances that an exposure could have resulted to persons in unrestricted areas, and the licensee did not report the occurrence to the NRC until January 31, 1997. (02012)

This is a repeat violation which was previously identified during the June 9 - 15, 1993, NRC inspection.

- 2. 10 CFR 30.50(b)(1) requires, in part, that each licensee notify the NRC within 24 hours after the discovery of an unplanned contamination event involving a quantity of tritium greater than 400 millicuries (which is greater than five times the lowest annual limit on intake specified in Appendix B to Part 20) that requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area.

Contrary to the above, as of March 28, 1997, and on several occasions, the licensee did not notify the NRC within 24 hours after the discovery of unplanned contamination events involving quantities of tritium greater than 400 millicuries (which is greater than five times the lowest annual limit on intake specified in Appendix B to Part 20) that required access to the contaminated area, by workers and the public, to be restricted for more than 24 hours by imposing additional radiological controls and by prohibiting entry into the area. Specifically:

- a. On March 13, 1997, the licensee became aware of an unplanned contamination event involving 450 millicuries of tritium at a night vision goggle room located at Ft. Devens, Massachusetts, that required access to the room to be restricted by imposing additional radiological controls and by prohibiting entry into the area beginning on March 5, 1997, and the licensee did not notify the NRC of the event until March 21, 1997;
- b. On April 13, 1995, the licensee became aware of an unplanned contamination event involving 4.6 curies of tritium at an optical repair shop at Camp Dodge, Johnston, Iowa, that required access to the shop to be restricted by imposing additional radiological controls and by prohibiting entry into the area from December 1994 through February 1995, and the licensee did not notify the NRC of the event until January 31, 1997. (02022)

This is a repeat violation which was previously identified during the June 9 - 15, 1993, NRC inspection

These violations represent a Severity Level II problem (Supplement IV).
Civil Penalty - \$8000.

Pursuant to the provisions of 10 CFR 2.201, the Department of the Army (Licensee) 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 this Notice of Violation and Proposed Imposition of Civil Penalties (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 action 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 penalties 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 penalties, 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 penalties will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) 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 penalties should not be imposed. In addition to protesting the civil penalties, in whole or in part, such answer may request remission or mitigation of the penalties.

In requesting mitigation of the proposed penalties, 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 civil penalties.

Upon failure to pay any civil penalties 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 penalties, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234(c) of the Act, 42 U.S.C. 2282c.

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

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 Lisle, Illinois
this 12th day of November 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064
June 13, 1997

EA 96-459

James R. Fife, President
Western Colorado Testing, Inc.
529 25 1/2 Road, #B101
Grand Junction, Colorado 81505

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$2,500 (NRC Inspection Report No. 150-00005/96-01 and Investigation
Report No. 4-96-040)

Dear Mr. Fife:

This refers to the inspection conducted from October 11, 1996, through February 3, 1997, and investigation conducted from August 14, 1996, through January 8, 1997, to review the activities of Western Colorado Testing, Inc., (WCTI) in the states of Idaho and Wyoming. The findings of the inspection and investigation were discussed with you during a telephonic exit briefing on February 3, 1997, and were documented in the subject inspection report dated March 7, 1997. Our March 7 letter forwarding the inspection report to you 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. WCTI was provided the opportunity to either respond to the apparent violation in writing within 30 days or to request a predecisional enforcement conference. WCTI did not request a predecisional enforcement conference, and instead WCTI provided a written response to the apparent violation in its letter dated April 1, 1997.

Based on the information developed during the inspection, and the information that you provided in your April 1 response to the apparent violation, 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 involves WCTI's failure to notify the NRC prior to conducting licensed activities in non-Agreement States in 1995 and 1996. In your April 1, 1997 letter, you acknowledged the violation, but stated that while certain individuals may have knowingly violated the rules, they did so without the knowledge of key management.

However, we note that WCTI senior managers were aware of the requirement to inform the NRC prior to working in areas of NRC's jurisdiction. Specifically, in 1992 WCTI filed an NRC Form-241 before conducting licensed activities in the State of Idaho. Given: (1) the knowledge of WCTI of the requirement to file NRC form-241's, (2) the apparent lack of communications between the Radiation Safety Officer (RSO) and laboratory supervisor, (3) the lack of clear lines of responsibility, (4) the RSOs' failure to identify and act on the violations, and (5) the failure to assure that the laboratory supervisor's statement concerning "not to spend unnecessary money" was not misunderstood, the NRC concludes that WCTI's failure to file for reciprocity demonstrates at least careless disregard for NRC requirements and is therefore willful.

The NRC considers the failure to obtain authorization to use byproduct material in areas under its jurisdiction, by either obtaining an NRC license or filing an NRC Form 241, to be a matter of significant regulatory concern because it denies the NRC an opportunity to assure that the activities are conducted in compliance with all NRC radiation safety requirements. In this case, the violation is especially significant because of its willful nature. Therefore, the violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy, a civil penalty with a base value of \$2,500 is considered for a Severity Level III violation. Because the violation was willful, 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. The NRC discovered the violation; thus, the NRC has determined that WCTI is not deserving of credit for identifying the violation. However, based on the corrective actions described in WCTI's April 1 letter, the NRC has determined that credit is warranted for *Corrective Action*. Withholding identification credit and giving credit for corrective actions results in the assessment of a penalty at the base value.

Accordingly, to emphasize the need for WCTI's management and RSO to assure that WCTI is meeting regulatory requirements, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice in the base amount of \$2,500 for the Severity Level III violation described above and in the Notice.

The NRC has also corresponded with the President and two former RSOs of WCTI concerning these matters. A copy of these letters will be provided to you under separate cover.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements. Your response may reference previously submitted correspondence, if appropriate.

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). Should you have any questions concerning this letter, please contact Gary Sanborn or Michael Vasquez at (817) 860-8222.

Sincerely,

Ellis W. Merschoff
Regional Administrator

Docket No. 150-00005
License No. Colorado 580-01

Enclosure: Notice of Violation
cc w/Enclosure: State of Colorado

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Western Colorado Testing, Inc.
Grand Junction, Colorado

Docket No. 150-00005
License No. Colorado 580-01
EA 96-459

During an NRC investigation conducted from August 14, 1996, through January 8, 1997, and inspection conducted October 11, 1996, through February 3, 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 NRC 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 are 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 each such activity, file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States", with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, on numerous occasions in 1995 and 1996, Western Colorado Testing, Inc., a licensee of the State of Colorado, an Agreement State, used nuclear gauges in Idaho and Wyoming, non-Agreement States, and failed to file a Form-241 with the NRC prior to engaging in such activity. Specifically, Western Colorado Testing, Inc., used nuclear gauges at the following locations on the indicated dates:

1. Idaho Falls Airport, Idaho, from April 8 to November 1, 1996; and
2. Dixon Airport, Wyoming, on April 16 - 20 and May 1, 1995.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$2,500.

Pursuant to the provisions of 10 CFR 2.201, Western Colorado Testing, Inc., (Licensee) 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 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

Notice of Violation and Proposed
Imposition of Civil Penalty

- 2 -

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 why the license should not be modified, suspended, or revoked or why such other action 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 violation 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: 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

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

Notice of Violation and Proposed
Imposition of Civil Penalty

- 3 -

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).

Dated at Arlington, Texas,
this 13th day of June 1997

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

EA 96-459

October 28, 1997

Mr. James R. Fife, President
Western Colorado Testing, Inc.
529 25 1/2 Road, #B101
Grand Junction, Colorado 81505

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$2,500
(NRC Inspection Report No. 150-00005 and Investigation Report No. 4-96-040)

Dear Mr. Fife:

This refers to your letter (submitted by your attorney) dated July 16, 1997, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated June 13, 1997. Our letter and Notice described one violation identified during an NRC inspection.

To emphasize the need for Western Colorado Testing, Inc.'s (WCTI's) management and radiation safety officer to assure that WCTI is meeting regulatory requirements, a civil penalty of \$2,500 was proposed.

In your response, you stated that the facts of the case warranted reconsideration of both the characterization of the violation (as willful), as well as the proposed assessment of the civil penalty. Your letter stated that it would be appropriate to remove the willful designation from the Notice and to waive the proposed penalty against WCTI.

After consideration of your response, we have concluded for the reasons given in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty that you have not provided an adequate basis for mitigation of the proposed civil penalty. Accordingly, the enclosed Order is being served on Western Colorado Testing, Inc., imposing a civil monetary penalty in the amount of \$2,500. As provided in Section IV of the enclosed Order, payment should be made within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738. We will review the effectiveness of your corrective actions during a subsequent inspection.

Western Colorado Testing, Inc.

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

James Lieberman
Director, Office of Enforcement

Docket No. 150-00005
License No. Colorado 580-1

Enclosure: As Stated

cc: State of Colorado
Phillip B. Cardi, Esq.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Western Colorado Testing, Inc.
Grand Junction, Colorado

)
)
)
)
)
Docket No. 150-00005
License No. Colorado 580-1
EA 96-459

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Western Colorado Testing, Inc., (WCTI or Licensee) is the holder of a General License pursuant to the provisions of 10 CFR 150.20(a). This authorizes any person who holds a specific license from an Agreement State to conduct the same activity in non-Agreement States subject to the provisions of 150.20(b). WCTI holds a specific license from the state of Colorado, an Agreement State, License No. 580-1.

II

An inspection of the Licensee's activities was conducted from October 11, 1996, through February 3, 1997, and an investigation was conducted from August 14, 1996, through January 8, 1997. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 13, 1997. The Notice states the nature of the violation, the provisions of NRC requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated July 16, 1997. In its response, the Licensee stated that facts of the case warrant a reconsideration of both the characterization of the violation (as willful) and the proposed civil penalty.

III

After consideration of the Licensee's response and the arguments for mitigation or reconsideration of the civil penalty contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to **Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.**

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

- 4 -

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read "James Lieberman", with a long horizontal flourish extending to the right.

James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 28th day of October 1997

APPENDIX

EVALUATION AND CONCLUSIONS

On June 13, 1997, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violation identified during an NRC inspection and investigation. Western Colorado Testing, Inc., (WCTI or Licensee) responded to the Notice in a letter dated July 16, 1997. In its response, the Licensee stated that facts of the case warrant a reconsideration of both the characterization of the violation (as willful) and the proposed civil penalty. However, the Licensee did not dispute the violation in its response and, in its April 1, 1997 letter responding to the inspection report, admitted the violation. The NRC's evaluation of the Licensee's request and conclusion regarding the Licensee's requests are as follows:

Summary of Licensee's Request for Mitigation

WCTI stated that, although management was aware of the requirement to inform the NRC prior to working in areas under NRC jurisdiction, this fact alone does not justify designation of the violation as willful, and the corresponding penalty of \$2,500. In support of its position, the Licensee stated that the Radiation Safety Officer (RSO), who was "not as honest and forthright" as WCTI's president, had represented to WCTI's president that he filed the required Form 241; and that WCTI's president made every effort to ensure compliance with NRC requirements. WCTI also noted that its compliance efforts are reflected by the fact that there has never been any previous escalated enforcement action against it. WCTI pointed out that, according to the NRC's Enforcement Policy, previous escalated enforcement is a factor that is considered in assessing a civil penalty, and that this factor was not considered in the proposed assessment of the civil penalty.

WCTI noted that, in cases where the NRC concludes that no willful violation has occurred, and no escalated enforcement action has been taken within the two prior years or during the two prior inspections, generally no penalty assessment is even proposed. WCTI maintained that its situation was distinguishable from that of other testing companies that had been "fined" by the NRC for willful violations of the same regulations. In this regard, WCTI claimed that it should not be classified together with those testing firms in which the principals were deliberately ignoring compliance requirements.

Finally, the Licensee argued that, upon being notified that Form 241 had not been filed, WCTI took prompt corrective action to ensure compliance and effective comprehensive action to prevent recurrence of the violation.

NRC Evaluation of Licensee's Request for Mitigation

Section VI.A. of the Enforcement Policy provides that, in general, licensees are held responsible for the acts of their employees. The Commission formally considered the *responsibility* issue between a licensee and its employees in its decision concerning the Atlantic Research Corporation case, CLI-80-7, dated March 14, 1980. In that case, the Commission stated, in part, that "a division of responsibility between a licensee and its employees has no place in the NRC regulatory regime which is designed to implement our obligation to provide adequate protection to the health and safety of the public in the commercial nuclear field."

Not holding the licensee responsible for the actions of its employees, whether such actions result from negligence or willful misconduct, is tantamount to not holding the licensee responsible for the use or possession of licensed material. If the NRC adopted this position, there would be less incentive for licensees to monitor their own activities to assure compliance because licensees could attribute noncompliance to employee negligence or misconduct. Therefore, notwithstanding WCTI's argument that the blame for the violation rests with the former company RSO, under long-established Commission Policy and case law, the company is still responsible for the actions of its former RSO. Further, the NRC notes that the violation continued to exist in 1996, after the assignment of a newly trained RSO. This detracts from the Licensee's argument that the blame lay with one particular former RSO.

As WCTI noted, Section VI.B.2 of the NRC's Enforcement Policy provides for consideration of previous escalated enforcement in the civil penalty assessment process. However, the civil penalty assessment process considers several factors, including whether the violation is willful. If any one of these considerations applies, the policy states that the NRC should normally consider identification in addition to corrective action in the civil penalty assessment process (regardless of the licensee's previous escalated enforcement). In this case, the NRC considered both identification and corrective action in determining the civil penalty because the NRC concluded that the violation was willful.

The term "willfulness," as defined by Section IV.C. of the NRC Enforcement Policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify, to and including careless disregard for requirements (emphasis added). In this case, as described in the NRC's Notice, the NRC concluded that WCTI (not its president), through the action of one or more of its representatives, committed a violation with careless disregard for NRC regulations, a condition that clearly meets the NRC's definition of a willful violation. As described in the Notice, the NRC's conclusion was based on several grounds, including the fact that WCTI had knowledge of the requirement to file NRC Form 241 (which WCTI admits in its response).

As to Licensee's discussion of the NRC Enforcement Policy, civil penalties are not normally proposed in cases where the NRC concludes that no willful violation has occurred and no escalated enforcement action has been taken within the two prior years or two prior inspections, provided that prompt and comprehensive corrective action is taken. However, the policy provides for consideration of civil penalties in cases involving willfulness.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation and enforcement sanction are best suited to the significance of the particular violation. In this case, as noted above, the NRC concluded that the violation was willful. Therefore, in accordance with Section VI.B of the Enforcement Policy, the NRC concluded that: (1) no credit was warranted for identification because the NRC identified the violation; and (2) credit was warranted for WCTI's prompt and comprehensive corrective action (had the NRC concluded otherwise, a civil penalty of \$5,000 would have been proposed).

In its response, WCTI claimed that its case was "readily distinguishable" from other similar enforcement actions such as EA 95-270, "Foley Construction Services," EA 95-101, "Testco, Inc.," and EA 93-241, "S. K. McBryde, Inc." The NRC agrees that WCTI's case is distinguishable from the cases cited by WCTI in that the cases cited involved deliberate violations, not violations involving careless disregard. However, WCTI's comparison of the civil penalty in this case to that in the cases cited is flawed in that: (1) the civil penalty in the Foley Construction Services case was based on the civil penalty assessment process described in an earlier Enforcement Policy¹; (2) the enforcement action taken against Testco, Inc., involved an Order Prohibiting Involvement in NRC-Licensed Activities to President of the company, as well as a civil penalty to the licensee, which was initially based on enforcement discretion and subsequently reduced from \$5,000 to \$1,000; and (3) the S. K. McBryde case did not involve an NRC Form-241 violation, it involved a Severity Level IV violation for failure to maintain complete and accurate records and a civil penalty that was based on the civil penalty assessment process described in the earlier Enforcement Policy¹. Furthermore, the enforcement action against WCTI is consistent with other recent cases involving careless disregard by testing companies to submit Form-241 where corrective action credit was warranted. For example, penalties of \$2,500 were assessed in enforcement actions involving EA 96-382, "Energy Technologies, Inc.," EA 96-382, "Grandin Testing Lab, Inc.," and EA 96-447, "Testing Laboratories, Inc."²

NRC Conclusion

The NRC concludes that the violation occurred as stated and that the Licensee has not provided adequate justification for reconsideration of the characterization of the violation as "willful" or for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of \$2,500 should be imposed.

¹ In this earlier Enforcement Policy, the base amount for a Severity Level III was \$500 and the civil penalty assessment process involved consideration of 6 factors. Under the current Enforcement Policy, the base amount for a Severity Level III is \$2,500 and the civil penalty assessment process involves consideration of 2 factors.

² These cases are available on the NRC web site at "<http://www.nrc.gov/oe/>", which is maintained by the Office of Enforcement.

B. SEVERITY LEVEL I, II, III VIOLATIONS
NO CIVIL PENALTY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 22, 1997

EA 97-357

Mr. Donald Meisel
Senior Vice President
Ambric Engineering, Inc.
3502 Scotts Lane
Philadelphia, Pennsylvania 19129

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-22164/97-001)

Dear Mr. Meisel:

This refers to the NRC inspection conducted on July 10, 1997, at a temporary field site at the Bally Meade Development in Claymont, Delaware, to review the circumstances associated with an incident involving the loss of a cesium-137 source from one of your moisture density gauges. The inspection was continued in the Region I office between July 11 and July 21, 1997, via several telephone conversations the NRC had with you and Mr. Michael Smith, Radiation Safety Officer, to obtain additional information concerning both the loss and subsequent recovery of the source on July 14, 1997. During the inspection, a violation of NRC requirements was identified, as described in the NRC inspection report transmitted with our letter, dated July 29, 1997. On August 13, 1997, a predecisional enforcement conference was held with you and Mr. Smith to discuss the violation, its causes, and your corrective actions. A copy of the enforcement conference report was sent to you by separate correspondence on August 19, 1997.

Based on the information developed during the inspection and the information you provided during the enforcement conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding the violation are described in detail in the subject inspection report. The violation involves the failure to maintain security of the source after it broke off its rod while being retracted into the gauge assembly on June 25, 1997. The source remained in the ground at the temporary jobsite unbeknownst to the gauge operator until it was found on July 14, 1997. The source was found after the NRC issued a Confirmatory Action Letter (CAL) to you on July 11, 1997, confirming your commitments to take actions to restrict access to the area where the source was believed to have been lost, survey the area and attempt to recover the source. On July 14, 1997, you reported to us that the source had been recovered.

The NRC is also concerned that this particular gauge was not inspected by the manufacturer prior to the loss of the source even though a Troxler Bulletin, issued in June 1996, as well as an NRC Information Notice (No. 96-52), dated September 26, 1996, recommended inspection of such gauges for cracks. An inspection of the rod/source weld may have detected a crack before the source actually broke off in June 1997. The failure to inspect and detect any crack in the weld beforehand resulted in the source being left in an unsecured area in the public

domain for approximately two weeks. Although the source was buried about two feet underground, given the fact that the source was unsecured in the public domain, the violation has been classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two inspections conducted in 1994 and 1991, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were both prompt and comprehensive. These actions were described in a July 11, 1997 CAL, in our inspection report, in your letter dated August 8, 1997, and were discussed during the enforcement conference. These actions included, but were not limited to: (1) restricting access to the area where the source was lost; (2) obtaining a survey meter with a sodium iodide detector and performing a comprehensive survey which resulted in location of the source; (3) properly transferring the source back to the manufacturer; (4) making arrangements for the source manufacturer to inspect all of your portable gauges for source tube cracking by October 31, 1997; (5) training gauge operators to recognize the symptoms of a detached source; and (6) obtaining a survey meter to verify that the source has not become detached from the source rod.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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 and its enclosure, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 030-22164
License No. 37-20968-01

Enclosure: Notice of Violation

ENCLOSURE

NOTICE OF VIOLATION

Ambric Engineering, Inc.
Philadelphia, PA

Docket No. 030-22164
License No. 37-20968-01
EA 97-357

During an NRC inspection conducted on July 10, 1997, at a temporary field site in Claymont, Delaware, and continued in the Region I office between July 11 and 21, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violation is listed below:

10 CFR 20.1802 requires, in part, that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, from June 25, 1997 to July 10, 1997, the licensee did not control and maintain constant surveillance of licensed material that was in an unrestricted area and not in storage. Specifically, a Troxler moisture density gauge source (containing approximately 6 millicuries of cesium-137) broke off from its source rod and was left at a jobsite in Claymont, Delaware, an unrestricted area, and the licensee did not control and maintain constant surveillance of this licensed material. (01013)

This violation is classified at Severity Level III (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Ambric Engineering Inc. 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 22nd day of August 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 4, 1997

EA 97-378

Mr. Daniel Young, Project Manager
Babcock and Wilcox Company
Nuclear Environmental Services, Inc.
Parks Township Facility
Vandergrift, PA 15690

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 070-00364/97-002)

Dear Mr. Young:

This refers to the NRC inspection conducted on July 9-11, 1997, at your Parks Township facility (a former plutonium fuel processing plant), for which an exit meeting was conducted on July 21, 1997. The inspection was conducted to review the circumstances associated with a personnel contamination incident which occurred during your activities to decommission the facility. During the inspection, three apparent violations of NRC requirements were identified, as described in the NRC inspection report transmitted with our letter, dated August 14, 1997. On August 28, 1997, a predecisional enforcement conference was conducted with Mr. R. Quinlan, yourself, and other Babcock and Wilcox staff, to discuss the violations, their causes, and your corrective actions. A copy of the enforcement conference report will be sent to you by separate correspondence.

Based on the information developed during the inspection and enforcement conference, as well as information provided in your letters to the NRC dated July 17, 1997, July 25, 1997, and August 20, 1997, the NRC has determined that three violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice). The violations involve (1) failure to implement ALARA practices to evaluate your decontamination methods prior to implementation, as required by your Decommissioning Plan; (2) failure to use engineering controls to limit the airborne concentrations of radioactive material and prevent the spread of contamination; and (3) failure to adequately monitor the concentrations of airborne activity in the vicinity of workers. The violations are described in detail in the Notice and the subject inspection report.

Due to the violations, on June 26, 1997, three of your decontamination technicians were contaminated while using machine-operated and hand-operated tools to scabble walls in a corner of a room in the former scrap recovery area of the facility. This scabbling activity, which involves aggressive removal of material from the wall surface in order to reduce non-removable contamination to levels below decommissioning criteria, lasted for approximately 90 minutes and resulted in the generation of a significant amount of dust and airborne activity. When the three workers exited the area at the end of their shift, elevated alpha contamination levels were identified on the one breathing zone (BZ) air sampler assigned to the three technicians during the work activity.

Prior to conducting the scabbling activity, you did not consider appropriate engineering controls to limit and restrict the concentrations of radioactive material generated in the air during the activity. Such controls could have involved containment or ventilation of the specific area in which the scabbling was being performed. As a result, you did not demonstrate sensitivity to achieving doses that are as low as reasonably achievable (ALARA). Poor planning prior to conducting the scabbling operations, as well as inadequate communication between the project office (responsible for implementation) and the safety office (responsible for assuring the activity was performed safely), contributed to these conditions.

These deficiencies were particularly significant in this case because of historical knowledge that there had been a liquid plutonium spill in this specific area while the facility was operational. Also, a sample had been taken in February 1997, from the wall in the southeast corner of this room, and the sample indicated that the area was contaminated with soluble plutonium. Nonetheless, you proceeded with the scabbling activity creating the potential for significant airborne activity. Moreover, only one of the three technicians who performed the activity wore a BZ sampler even though the two individuals doing the motor-operated scabbling were separated from the one individual doing the hand scabbling, by approximately 20 feet. Similarly, when surveys were conducted the following day to evaluate the incident, the two health and safety technicians that conducted that post-incident survey did not wear a BZ sampler or submit samples for timely bioassays. The NRC recognizes that subsequent surveys of the workers identified minimal contamination on the workers' inner clothing and skin, urine bioassays indicated less than detectable levels, and calculations indicated doses below limits.

Despite the minimal safety consequence, the violations demonstrate a significant lack of oversight and control of licensed activities. As such, the violations have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were both prompt and comprehensive. These actions, which were described during the enforcement conference, and/or during the inspection, included, but were not limited to: (1) preparation of Job Safety Analysis and Job ALARA Determinations of this activity; (2) initiation of plan-of-the-day reviews to ensure appropriate coordination of work activities by the safety, engineering, and operations staff; (3) retraining of staff regarding use of protective clothing and staff "stop work authority;" and (4) improved engineering controls in the form of improved decontamination equipment and ventilation controls.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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).

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 070-00364
License No. SNM-414

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Pennsylvania

ENCLOSURE

NOTICE OF VIOLATION

Babcock and Wilcox Company
Vandergrift, Pennsylvania

Docket No. 070-00364
License No. SNM-414
EA 97-378

During an NRC inspection conducted on July 9-11, 1997, for which an exit meeting was conducted on July 21, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the violations are listed below:

- A. 10 CFR 20.1101(b) requires, in part, that licensees use, to the extent practicable, procedures and engineering controls to achieve occupational doses that are as low as is reasonably achievable (ALARA).

Condition 10 of License No. SNM-414 requires that licensed material be possessed, used and decommissioned in accordance with statements, representations and conditions contained in Part I of the licensee's application, dated March 21, 1995, and supplement dated January 4, 1996. Part I, Chapter 7 to the letter dated March 21, 1995, requires, in part, that ALARA principles be implemented to evaluate clean-up methods, disposal options and final contamination levels.

Contrary to the above, prior to June 26, 1997, procedures to ensure, to the extent practicable, that occupational doses are ALARA, were not used to evaluate the remediation methods to decontaminate the lower two courses of concrete block in the southeast corner of FAB 6 of Building A. Although the licensee had historical knowledge of the processes conducted in the area which indicated that the area was previously contaminated with soluble plutonium at significant levels, and data obtained via a characterization sample of the area in February 1997 indicated approximately 160,000 disintegrations per minute/100 square centimeters (dpm/100 cm²) fixed alpha surface contamination, and 0.165 microcuries of total plutonium per gram of concrete, the licensee failed to evaluate the consequences of scabbling the highly contaminated area and did not consider alternate methods for decontaminating the area that would have limited or prevented worker exposure to the elevated activity. As a result, the scabbling activity caused airborne Pu-239 concentrations approximately 100,000 times the Derived Air Concentration listed in 10 CFR 20, Appendix B.

- B. 10 CFR 20.1701 requires that the licensee shall use, to the extent practical, process or other engineering controls (e.g. containment or ventilation) to control the concentrations of radioactive material in the air.

Contrary to the above, prior to June 26, 1997, the licensee did not use, to the extent practical, process or other engineering controls (e.g. containment or ventilation of the area) to control the concentrations of radioactive material in the air prior to the remediation of the lower two courses of concrete block in the southeast corner of FAB 6 of Building A. Specifically, the licensee conducted scabbling which created the possibility of significant airborne contamination due to known soluble plutonium contamination in the walls of that area, and characterization survey information from

February 1997 indicated significant levels of plutonium contamination (160,000 disintegrations per minute/100 square centimeters (dpm/100 cm²) fixed alpha surface contamination, and 0.165 microcuries of total plutonium per gram of concrete).

- C. 10 CFR 20.1501(a) requires, in part, that each licensee shall make or cause to be made, surveys that may be necessary for the licensee to comply with the regulations in this part, and are reasonable under the circumstances to evaluate concentrations or quantities of radioactive material. In addition, 10 CFR 20.1703(a)(3) requires if the licensee uses respiratory protection equipment to limit intakes pursuant to 20.1702, the licensee shall implement and maintain a respiratory protection program that includes (1) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures; and (2) surveys and bioassays, as appropriate, to evaluate actual intakes.

Condition 10 of License No. SNM-414 requires that licensed material be possessed and used in accordance with the statements, representations and conditions contained in Part I of a letter, dated March 21, 1995. Part I, Chapter 3 of the letter dated March 21, 1995, requires, in part, that all radiological safety functions required by license shall be conducted in accordance with approved written procedures or instructions, such as Radiation Work Permits (RWP). RWP-PTS-003-96, issued December 1995, required supplied air-line respiratory protection and breathing zone (BZ) air samples when working or sampling in soluble plutonium areas.

Contrary to the above, adequate surveys were not made to evaluate the concentration or quantity of radioactive material in the air of work areas, and to evaluate actual intakes of radioactive material, and the surveys were not in accordance with RWP-PTS-003-96. Specifically,

1. On June 26, 1997, the one BZ sampler assigned for the three workers performing hand-scabbling and motor-operated scabbling of FAB 6 of Building A, and who were wearing supplied air line respiratory protection in a soluble plutonium area, was not representative of the operators breathing zone for approximately 45 minutes (half of the exposure duration) in that the sampler was assigned to one of the two individuals performing the motor-operated scabbling, and those two individuals were, at times, separated from the other individual doing the hand-scabbling by approximately 20 feet; and
2. On June 27, 1997, two workers wearing supplied air-line respiratory protection in a soluble plutonium area, conducted sampling and surveying in FAB 6 of Building A without either worker wearing a BZ sampler for an exposure duration estimated at 15 to 25 minutes, and without any subsequent bioassays to evaluate actual intakes.

These violations are categorized in the aggregate as a Severity Level III problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Babcock & Wilcox Company 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 4th day of September 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 25, 1997

EA 97-360

Ms. Diane Krolikowski, Vice President
Patient Care Services
Berwick Hospital
701 East 16th Street
Berwick, Pennsylvania 18603

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-12854/97-001)

Dear Ms. Krolikowski:

This refers to the NRC inspection conducted on July 9, 1997, at the above address in Berwick, Pennsylvania, the findings of which were discussed with you during an exit meeting on July 9, 1997. During the inspection, one violation of NRC requirements was identified, as described in the NRC inspection report transmitted with our letter dated August 19, 1997. In the August 19, 1997 letter, the NRC provided you an opportunity to either respond in writing to the apparent violations addressed in the inspection report or request a predecisional enforcement conference. You responded to the apparent violation in an August 27, 1997 letter to the NRC and admitted the apparent violation.

Based on the information developed during the inspection and the information you provided in your August 27, 1997 response, the NRC has determined that one violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involves failure to secure licensed materials in your Hot Lab, an unrestricted area. The violation represents a significant regulatory concern because the failure to maintain appropriate security of the material could result in it being lost or stolen, and also has the potential to cause exposure to members of your staff, as well as members of the public. Therefore, the violation is classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The violation demonstrates the importance of adequate oversight of management in general, and your radiation safety staff in particular to ensure this requirement is met.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These actions, which were described in your August 27, 1997 letter, included, but not limited to, (1) installation of a self-closing device and a push button combination lock on the door of the hot lab; and (2) plans to have your consultant, in addition to your Radiation Safety Officer, periodically audit security of materials.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

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 and the date when full compliance was achieved is already adequately addressed on the docket in your letter dated August 27, 1997. Therefore, you are not required to respond to this letter 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,

Hubert J. Miller
Regional Administrator

Docket No. 030-12854
License No. 37-17502-01

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Pennsylvania

ENCLOSURE

NOTICE OF VIOLATION

Berwick Hospital
Berwick, Pennsylvania

Docket No. 030-12854
License No. 37-17502-01
EA No. 97-360

During an NRC inspection conducted on July 9, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the violation is listed below:

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, for approximately 10 minutes on July 9, 1997, the licensee did not secure from unauthorized removal or limit access to licensed material (including a 1.5 curie technetium-99m generator and 370 millicuries of technetium-99m eluate) located in the Nuclear Medicine hot lab, which was an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. **(01013)**

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

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 and the date when full compliance was achieved is already adequately addressed on the docket in letter from Licensee dated August 27, 1997. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Dated at King of Prussia, Pennsylvania
this 25th day of September 1997

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 24, 1997

EA 97-512

Mr. Dennis Bittner, President
Bittner Engineering, Inc.
103 South 10th Street
Escanaba, MI 49829

**SUBJECT: NOTICE OF VIOLATION AND NRC INSPECTION REPORT
030-30982/97001(DNMS)**

Dear Mr. Bittner:

This refers to the inspection conducted on October 21, 1997, at Bittner Engineering, Inc. in Escanaba, Michigan. The purpose of the inspection was to review an event involving damage to a moisture/density gauge at a construction site. The enclosed report contains the NRC inspection findings, and describes the event and the associated violation in detail. On October 31, 1997, members of my staff contacted you by telephone to discuss the violation described in the enclosed report which was being considered for escalated enforcement action. During the telephone conversation you agreed with the inspection findings, and indicated that a predecisional enforcement conference was not desired.

Based on the information developed during the inspection, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report.

The violation involves the failure to control licensed material in an unrestricted area. As a result of this failure, a gauge containing 8 millicuries of cesium-137 and 40 millicuries of americium-241 was run over by construction machinery and damaged. Specifically, a licensee designated gauge user who was measuring soil compaction at a temporary job-site near Bark River, Michigan, placed the gauge on a soil bank that bordered the area where a compactor was rolling soil. While waiting to complete measurements in the compactor roller pattern area, the gauge user turned his attention to another detail and walked about 75 feet away from the device. While the user's back was turned, the compactor operator changed the roller pattern and backed into the soil bank, crushing the moisture/density gauge.

Incumbent upon each NRC licensee is the responsibility to protect public health and safety by ensuring that radioactive materials are controlled at all times. The NRC recognizes that you implemented your emergency procedures and performed radiation surveys that revealed no excessive radiation levels or contamination levels from the damaged moisture/density gauge. Nevertheless, the failure to maintain security or constant surveillance of licensed material, particularly at a temporary job site, represents a significant failure to meet license commitments

and responsibilities and is of regulatory concern. This failure takes on even greater significance because it resulted in damage to the gauge. Therefore, the violation is classified in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 as a Severity Level III violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. We have determined that the actions following the event were both prompt and comprehensive and, therefore, credit for corrective action is warranted. These actions include: (a) the radiation safety officer informed all gauge operators of the event, (b) all staff were provided with refresher training which covered the license requirements and the importance of maintaining control of licensed material, and (c) the gauge operators were scheduled for additional training by the gauge manufacturer during the month of November.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III problem constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violation and the corrective actions taken and/or planned to correct the violation and prevent recurrence is already adequately addressed in the enclosed Inspection Report No. 030-30982/97001(DNMS) and during NRC's telephone conversation with you on October 31, 1997. Therefore, you are not required to respond to this letter 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.

D. Bittner

-3-

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if you choose to send one, will be placed in the NRC Public Document Room.

Sincerely,

for James P. Caldwell
A Bill Beach
Regional Administrator

Docket No. 030-30982
License No. 21-26010-01

Enclosures: 1. Notice of Violation
2. Inspection Report 030-30982/97001(DNMS)

NOTICE OF VIOLATION

Bittner Engineering, Inc.
Escanaba, Michigan

Docket No. 030-30982
License No. 21-26010-01
EA 97-512

During an NRC inspection conducted on October 21, 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:

Condition 15 of License No. 21-26010-01 requires, in part, that when performing tests at temporary job sites, the authorized user shall not leave the moisture/density gauge unattended.

Contrary to the above, on October 14, 1997, an authorized user left a moisture/density gauge containing 8 millicuries (296 MBq) of cesium-137 and 40 millicuries (1.48 GBq) of americium-241 unattended at a temporary job site. The gauge was subsequently damaged by construction equipment.

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

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 and the date when full compliance will be achieved is already adequately addressed in Inspection Report No. 030-30982/97001(DNMS). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, Illinois 60532, within 30 days of the date of the letter transmitting this Notice.

If you choose to provide a response, it will be placed in the NRC Public Document Room (PDR), and 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.

Dated at Lisle, Illinois
this 24th day of November 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 25, 1997

EA 97-359

Mr. Wayne Rankin, Chief Financial Officer
J. C. Blair Memorial Hospital
Warm Springs Avenue
Huntingdon, Pennsylvania 16652

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-13415/97-001)

Dear Mr. Rankin:

This refers to the NRC inspection conducted on July 8, 1997, at the above address in Huntingdon, Pennsylvania, the findings of which were discussed with you during an exit meeting on July 8, 1997. During the inspection, one violation of NRC requirements was identified, as described in the NRC inspection report transmitted with our letter dated August 19, 1997. In the August 19, 1997 letter, the NRC provided you an opportunity to either respond in writing to the apparent violation addressed in the inspection report or request a predecisional enforcement conference. You responded to the apparent violation in a September 9, 1997 letter to the NRC.

Based on the information developed during the inspection and the information you provided in your September 9, 1997 response, the NRC has determined that one violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involves failure to secure licensed materials in your Nuclear Medicine hot lab, an unrestricted area. You noted, in your September 9, 1997 response, that you determined that the door was not closing and locking consistently because it was rubbing against the floor. You also noted that the door hinges were loose and bent from the weight of the door.

The violation represents a significant regulatory concern because the failure to maintain appropriate security of the material could result in it being lost or stolen, and also has the potential to cause exposure to members of your staff, as well as members of the public. Therefore, the violation is classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The violation demonstrates the importance of adequate oversight of management in general, and your radiation safety staff in particular, to ensure this requirement is met.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These actions, which were described in your September 9, 1997 letter consisted of ordering and installing three heavy duty hinges on the doors enabling the door to close and lock properly.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

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 and the date when full compliance achieved is already adequately addressed on the docket your letter, dated September 9, 1997. Therefore, you are not required to respond to this letter 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,

Hubert J. Miller
Regional Administrator *fu*

Docket No. 030-13415
License No. 37-03552-02

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Pennsylvania

ENCLOSURE

NOTICE OF VIOLATION

J. C. Blair Memorial Hospital
Huntingdon, Pennsylvania

Docket No. 030-13415
License No. 37-03552-02
EA No. 97-359

During an NRC inspection conducted on July 8, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the violation is listed below:

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, for approximately 10 minutes on July 8, 1997, the licensee did not secure from unauthorized removal or limit access to licensed material (including a vial containing 53 millicuries of technetium-99m and a syringe containing a unit dose of 25 millicuries of technetium-99m) located in the Nuclear Medicine hot lab, which was an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. (01013)

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

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 and the date when full compliance was achieved is already adequately addressed on the docket in a letter from Licensee, dated September 9, 1997. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Dated at King of Prussia, Pennsylvania
this 25th day of September 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

October 8, 1997

EA 97-391

Mr. Kenneth A. Taylor
Senior Vice President
Director of Services
Bowser-Morner, Inc.
Dayton, OH 45424

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT NO. 030-12676/97001
(DNMS))

Dear Mr. Taylor:

This refers to the special inspection conducted on August 5, 1997, with continuing NRC review through August 13, 1997, at the Bower-Morner, Inc. (BMI), Dayton, Ohio facility. The purpose of the inspection was to review an incident which resulted in damage to a moisture-density gauge on July 29, 1997, at a construction site in Corwin, Ohio. As described in the NRC inspection report sent to you on August 28, 1997, one apparent violation of NRC requirements was identified during the inspection. You were given the option of requesting a predecisional enforcement conference or submitting a written response to the apparent violation. In your letter dated September 22, 1997, you chose to submit a written response.

Based on the information developed during the inspection and the information provided in BMI letters dated August 27, 1997 and September 22, 1997, the NRC has determined that a significant violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report.

The violation, failure to secure or maintain constant surveillance of licensed material, occurred because the gauge operator did not follow BMI radiation safety procedures. The circumstances of the incident indicate that the operator exercised poor judgement by failing to ensure that the moisture density gauge was appropriately safeguarded. Leaving the device containing NRC licensed material unsecured and uncontrolled in an unrestricted area with the source rod in the extended position is of significant safety concern to the NRC. The source rod was damaged when the device was run over by construction equipment and it was fortuitous that the source did not separate from the rod. Incumbent upon each NRC licensee and its employees is the responsibility to protect public health and safety by ensuring that all NRC requirements are met, and in particular, that NRC licensed material is controlled so that it is not lost or damaged and does not constitute a hazard to the public. This violation represents a significant failure to control licensed material and is categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III Violation. Your facility has not been the subject of NRC escalated enforcement action; therefore, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. In this case, NRC determined that credit was warranted based on the following corrective actions: (a) the operator was suspended for two days without pay; (b) upon return to BMI, the operator was reinstructed in BMI procedures and was required to demonstrate to the Radiation Safety Officer the transportation and securement procedures; (c) the incident was discussed with the field technicians/operators during the August 20, 1997, safety meeting; (d) a memorandum emphasizing proper material control procedures was sent to all BMI field technicians and to BMI branch offices; and (e) to further heighten awareness and to emphasize the importance of maintaining control of licensed material, a description of the incident has been incorporated into the annual refresher training program.

Therefore, to encourage prompt and comprehensive corrective actions, I have decided not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reasons for the violation, and the corrective actions taken and planned to correct the violation and prevent recurrence are already adequately addressed in BMI letters dated August 27, 1997 and September 22, 1997. Therefore, you are not required to respond to this letter 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, the enclosed Notice, and your response if you choose to respond, will be placed in the NRC Public Document Room.

Sincerely,

A. Bill Beach
Regional Administrator

Docket No. 030-12676
License No. 34-17390-01

Enclosure: Notice of Violation

NOTICE OF VIOLATION

Bowser-Morner, Inc.
Dayton, Ohio

Docket No. 030-12676
License No. 34-17390-01
EA 97-391

During an NRC inspection conducted on August 5 - 13, 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 20.1801 requires that the licensee secure from unauthorized removal licensed materials that are stored in an unrestricted area. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, an unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on July 29, 1997, the licensee did not secure from unauthorized removal or limit access to a Troxler moisture/density gauge containing licensed material, nominally 8 millicuries (296 Mbq) of cesium-137 and nominally 40 millicuries (1.48 GBq) of americium-241 in sealed sources, at a construction site in Corwin, Ohio, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. (01013)

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

The NRC has concluded that information regarding the reasons for the violation, and the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed in a letters from Bowser-Morner, Inc. dated August 27, 1997 and September 22, 1997. However, you are required to respond to the provisions of 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, within 30 days of the date of the letter transmitting this Notice of Violation.

Dated at Lisle, Illinois
this 8th day of October 1997

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

December 16, 1997

EA 97-507

Mr. Hugh Blythe, Manager
Health, Safety And Environment
B. P. Chemicals, Inc.
Lima, OH 45802

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report 040-07604-97002)

Dear Mr. Blythe:

This refers to the inspection conducted September 8-10, 1997 and October 8-10, 1997, at B. P. Chemicals, Inc. (BPCI) in Lima, Ohio. The purpose of the inspection was to examine the implementation of selected portions of the Quality Assurance/Quality Control (QA/QC) program relating to onsite waste disposal under the Mixed Waste Pond Closure Project, and to follow up on the items discussed in a Confirmatory Action Letter (CAL) No. RIII 97-010 issued on August 29, 1997. During the inspection apparent violations of NRC requirements were identified. The report documenting this inspection was sent to you by letter, dated October 31, 1997. A predecisional enforcement conference was conducted in the NRC Region III office on November 19, 1997, with you and members of your staff to discuss apparent violations, their causes, and your corrective actions.

Based on the information developed during the inspection, and the information that BPCI provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report.

The violations involve failure to fully implement the QA/QC plan as required by BPCI's license conditions and requirements. Based on the CAL, BPCI temporarily halted the Pond Closure Project because of concerns that sludge mixing, sampling, laboratory analyses, and record-keeping were not adequate to ensure that the onsite disposal cell met (and could be proven to meet) NRC radiological criteria. While these items were corrected, other programmatic deficiencies of the QA/QC plan were found by NRC inspectors. Furthermore, the deficiencies represent missed opportunities on the part of BPCI's management and staff to prevent future recurrence of these problems. The root cause of these violations appears to be long-term management inattention to the details of the NRC license and its subordinate documents, which constitute regulatory requirements of the NRC.

Individually, the safety significance of the violations was low because the uranium concentration of the material placed into the disposal cell up to the time of identification of the violations was well within applicable NRC limits and not considered a hazard to public health and safety.

However, the violations do represent a significant regulatory concern because the continuation of violations in the QA/QC area represents a programmatic breakdown, and because management and staff failed to recognize the need to maintain the fidelity of the NRC license and associated documents. Further, documents and records regarding decommissioning are of particular concern to the NRC because they are very important for future knowledge of remediation of the site after all of the individuals involved are no longer available. Therefore, these violations are classified in the aggregate in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$5,500 is considered for a Severity Level III problem. Because your facility has not been the subject of escalated enforcement actions within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for *Corrective Action* was warranted for the following reasons: (1) BPCI added an outside consultant to the staff to review its license and other requirements, and to assist the Radiation Safety Officer in his duties; (2) all applicable personnel will receive training regarding the fundamentals of the QA/QC program; (3) BPCI has reviewed all aspects of the QA/QC program, and is in the process of revising and updating the plan; and (4) BPCI management has increased its oversight of the program through an extensive audit function.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

During the November 9, 1997 predecisional enforcement conference, you took exception with some of the apparent violations described in the October 31, 1997 inspection report. Specifically, you stated that NRC requirements did not define "critical phases," and that BPCI applied the definition provided by State of Ohio EPA requirements. After careful consideration of your statements and a review of documentation, the NRC has determined that use of the Ohio EPA definition for critical phases did not violate NRC requirements; therefore, this apparent violation has been withdrawn. Further, you indicated that the four apparent violations against portions of Section 2 of your QA/QC Plan should more appropriately be cited against Section 11 of your QA/QC Plan. In addition, your staff maintained that Section 2 was not applicable to sludge sampling. We have reviewed Sections 2 and 11 of the BPCI QA/QC Plan and agree that the apparent violations in question should be cited against Section 11 which indicates that documentation will be in accordance with Section 2. Therefore, we have consolidated the four apparent violations into one as documented in violation H of the enclosed Notice.

You are required to respond to this letter, and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

H. Blythe

-3-

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.

Sincerely,

A. Bill Beach
Regional Administrator

Docket No. 040-07604
License No. SUB-0908

Enclosure: Notice of Violation

NOTICE OF VIOLATION

B. P. Chemicals, Inc.
Lima, OH

Docket No. 040-07604
License No. SUB-0908
EA 97-507

During an NRC inspection conducted on September 8-10, 1997, and on October 8-10, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

Condition 24 of License No. SUB-0908 requires the licensee to conduct its mixed waste pond closure program in accordance with statements, representations, and procedures contained in an application dated February 7, 1994, and a letter dated May 23, 1997.

Appendix E, Volume III of the referenced application describes the Quality Assurance/Quality Control (QA/QC) Plan to be followed by B. P. Chemicals, Inc.

- A. Section 1.2 of the QA/QC Plan entitled, "Construction Quality Assurance Organization," states that construction quality assurance will be provided by inspection personnel of B.P. Chemicals construction department.

Contrary to the above, since at least 1995, quality assurance was not provided by inspection personnel of B.P. Chemicals' construction department. (01013)

- B. Section 9.2.1 of the QA/QC Plan entitled, "Daily Field Logs," requires daily field logs to be kept by each of the contractor supervisors, as well as the engineer or his designated representative, and the BPCI project inspector. Copies of the contractor daily logs will be submitted to the BPCI project inspector and engineer or his designated representative, on Monday of each week.

Contrary to the above, between January 1996 and September 1997, daily field logs were not kept by one engineer (Dames & Moore) or by one contractor (Bowser-Morner). In addition, on four occasions between December 5, 1996, and August 11, 1997, another contractor (Sevensen Environmental Services) did not keep daily field logs as required. (01023)

- C. Section 9.2.2 of the QA/QC Plan entitled, "Daily Summary Reports," requires daily summary reports to be completed by the engineer, or his designated representative. Section 9.2.2 also specifies a list of information to be included in the reports.

Contrary to the above, neither the engineer (Dames & Moore) nor any designated representative prepared daily summary reports after November 1996, and no reports were prepared throughout the performance of the mixed waste pond closure project in 1997. Further, the daily summary reports prepared by Dames & Moore prior to November 1996 did not contain all of the information required in this section. (01033)

- D. Section 9.2.3 of the QA/QC Plan entitled, "Inspection Data Sheets," requires all observations and/or field and/or laboratory tests conducted by the contractor's approved testing agency or the B.P.C.I. inspector to be recorded on an inspection data sheet. The minimum required information includes a unique identifying sheet number and the signatures of contractor management and the engineer.

Contrary to the above, throughout the performance of the mixed waste pond closure project in 1997, observations and field and/or laboratory tests were not recorded on inspection data sheets. Further, the forms used during the project lacked unique identifying sheet numbers and were not signed by contractor management or the engineer. (01043)

- E. Section 9.2.4 of the QA/QC Plan entitled, "Problem Identification and Corrective Measures Reports," requires that Problem Identification and Corrective Measures Reports be cross-referenced to specific inspection data sheets where the problem was identified and shall be submitted to the engineer, or his designated representative, at the time of observation or inspection. A problem is defined as material or workmanship that does not meet the specified design.

Contrary to the above, throughout performance of the mixed waste pond closure project in 1997, Problem Identification and Corrective Measures Reports were not used for every deficiency in material or workmanship that was identified and corrected. Reports that were prepared did not cross-reference specific inspection data sheets as required, and some reports were sent to the project manager rather than to the engineer as required. In addition, the reports prepared did not contain all of the information or signatures required. (01053)

- F. Section 9.5 of the QA/QC Plan entitled, "Storage of Records," requires that during the mixed waste pond closure project records are to be kept onsite by the contractor, at another location on the plant property by the owner, and at an offsite location by the engineer.

Contrary to the above, throughout performance of the mixed waste pond closure project in 1997, records were not kept at an offsite location by the engineer (Dames & Moore). (01063)

- G. Section 10 of the QA/QC Plan describes the laboratory and specified the lab activities to be conducted by NUS staff utilizing NUS reference procedures.

Contrary to the above, throughout performance of the mixed waste pond closure project in 1997, lab activities were not conducted by NUS staff, nor were NUS procedures utilized. (01073)

- H. Section 11.4 of the QA/QC Plan entitled, "Procedure for Verification of Attainment of Option 2 Criterion for Stabilized Sludge Radioactivity Levels," states that all sample collection activities will be documented as outlined in Section 2.0, "Soil Sampling."

Section 2.6.1.1 of the QA/QC Plan entitled, "Daily Logs," requires, in part, that during the project, information recorded on daily logs and data forms include such information as field observations, weather conditions, levels of personnel protection used, and unusual circumstances or difficulties, and the signature and initials of the person recording the information.

Section 2.6.1.2 of the QA/QC Plan entitled, "Sample Identification," requires the collection of field duplicate samples, with their own sequential numbering system, not communicated to the laboratory.

Section 2.6.1.3 of the QA/QC Plan entitled, "Sample Containerization and Labeling," requires each sample to be labeled and the label is to include the sampling date and the name of the collector.

Section 2.6.1.7 of the QA/QC Plan entitled, "Transfer of Custody and Shipment," requires that shipping containers must be sealed with custody seals for shipment to the laboratory.

Contrary to the above, throughout the performance of the mixed waste pond closure project in 1997 and until September 9, 1997, the daily logs and data forms did not contain the required information; field duplicate samples were not collected; labels on recently collected and archived samples randomly examined by the NRC inspector, contained neither the date nor the name of the collector; and shipping containers of samples collected at the pug mill for transport to the laboratory did not have custody seals. (01083)

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

Pursuant to the provisions of 10 CFR 2.201, B. P. Chemicals, Inc. (Licensee) 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 III, 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) reason for the violation, 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 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.

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 Lisle, Illinois
this 16th day of December 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION II
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-3415

November 28, 1997

EA 97-443

BWX Technologies
ATTN: Mr. J. A. Conner Vice
President & General Manager
Naval Nuclear Fuel Division
P. O. Box 785
Lynchburg, VA 24505-0785

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT NO. 70-27/97-08)

Dear Mr. Conner:

This letter refers to an inspection conducted by this office on July 6 through September 15, 1997, at the Naval Nuclear Fuel Division (NNFD) facility in Lynchburg, Virginia. The inspection included a review of the facts and circumstances surrounding an event in which Uranium-235 (U-235) mass limits were exceeded on an accountability transfer cart. The event was reported to the NRC on July 28, 1997, in accordance with NRC Bulletin 91-01. On August 1, 1997, a Confirmatory Action Letter was issued confirming NNFD's decision to suspend the repackaging and transfer of metallurgical mounts and complete a root cause investigation. The results of the inspection were transmitted to NNFD by letter dated October 9, 1997. This letter also provided NNFD the option of providing a written response or attending a predecisional enforcement conference to address the apparent violations, their cause, and corrective actions to preclude recurrence. At NNFD's request, on November 20, 1997, a predecisional enforcement conference was held at the Region II office. A listing a conference attendees and copies of NNFD and NRC presentation materials are enclosed.

Based on the information developed during the inspection and the information provided during the conference, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. They involve three instances where NNFD failed to conduct activities involving licensed material in accordance with written and approved instructions as required by Section 2.7 of the license application. Specifically, the violations were associated with: (1) the failure to comply with criticality safety limits specified for an accountability transfer cart in three of four storage locations; (2) the use of unapproved instructions for handling metallurgical mounts containing U-235; and (3) the failure to follow procedures and discontinue operations when personnel determined that processing activities for the metallurgical mounts were not addressed by procedure. At the conference, NNFD admitted the violations and stated that the root causes of the July 26-28, 1997 event were inadequate supervisory oversight of activities, use of multi-tier criticality safety limits without sufficient operator guidance, and the use of unauthorized instructions.

Based on NNFD's subsequent criticality safety analysis of the as-discovered storage conditions on the transfer cart, the actual and potential safety consequences of exceeding the criticality safety limits for the material configuration in this event were low. The NRC concurs with this conclusion. However, collectively, the violations are of significant regulatory concern in that they represent a breakdown in the criticality safety process and a lack of management control over the metallurgical mount activities conducted on July 26-28, 1997. Although the sorting and repackaging of metallurgical mounts was an infrequently performed activity, appropriate supervisory and procedural guidance were not instituted to properly control the activities. As discussed at the conference, the operators involved in the event attempted to conduct activities properly by asking questions regarding their activities; however, due to miscommunications and the lack of proper procedures, those efforts failed. In addition, the failure of the operators to discontinue operations when the Jaw Crushing Procedure did not adequately address the activities they were performing indicated a lack of emphasis on the importance of procedural compliance. The multiple weaknesses revealed by the July event are of paramount concern because they resulted in the violation of nuclear criticality safety limits that were established to prevent criticality events. Therefore, in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, the violations described in the enclosed Notice have been categorized in the aggregate as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$13,750 is considered for a Severity Level III problem. Because NNFD has not been the subject of escalated enforcement action in the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process described in Section VII.B.2 of the Enforcement Policy. As described in detail in the subject inspection report and the information provided by NNFD at the conference, corrective actions included, in part: (1) prompt removal of the excess material from the transfer cart under the supervision of a nuclear safety engineer; (2) suspension of activities involving the transfer and repackaging of metallurgical mounts and conduct of a prompt and thorough root cause investigation; (3) revision of jaw crushing procedures to clearly delineate requirements; (4) issuance of a lessons learned report to plant personnel who handle special nuclear material (SNM) and a management directive stressing the use of the formal procedure system; (5) addition of a Recovery Supervisor to the third shift; (6) review of all multicontainer limited systems in the plant and reduction of the criticality limits on 17 systems to a single container; (7) increased use of engineered controls; (8) simplification of criticality safety limit postings; (9) implementation of a computerized inventory system for vault storage; and (10) planned implementation of a new transfer cart design. In view of these actions, the NRC concluded that credit is warranted for *Corrective Action*.

Therefore, to encourage prompt and comprehensive corrective actions and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to issue a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

At the conference, members of the NNFD staff discussed three additional issues relating to the accuracy of the subject inspection report. These issues are discussed in Enclosure 2. This letter and Enclosure 2 clarify the record with respect to these statements.

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. 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 enclosures, 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.

Should you have any questions concerning this letter, please contact us.

Sincerely,

Luis A. Reyes
Regional Administrator

Docket No. 70-27
License No. SNM-42

- Enclosures:
1. Notice of Violation
 2. Licensee Comments on NRC
Inspection Report No. 70-27/97-08
 3. List of Conference Attendees
 4. NNFD Presentation Materials
 5. NRC Presentation Materials

cc w/encls: (See Page 4)

BWX Technologies

4

cc w/encls:
A. F. Olsen
Licensing Officer
BWX Technologies
Naval Nuclear Fuel Division
P. O. Box 785
Lynchburg, VA 24505-0785

Leslie P. Foldesi, Director
Bureau of Radiological Health
Division of Health Hazards Control
Department of Health
109 Governor Street, Room 916
Richmond, BA 23219

NOTICE OF VIOLATION

BWX Technologies
Lynchburg, Virginia

Docket No. 70-27
License No. SNM-42
EA 97-443

During an NRC inspection conducted on July 6 through September 15, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

License Condition S-1 of Special Nuclear Material License No. 42 (SNM-42) requires that licensed materials be used in accordance with the statements, representations, and conditions contained in Chapters 1 through 8 of the application submitted by letter dated July 14, 1995, and supplements dated August 4, 9, 21, and 29, and November 9, 1995; February 1, March 15 and 20, April 15, May 1 (two letters), September 23, and December 4, 1996; and January 31, 1997.

Chapter 2.7 of the License Application requires activities involving licensed material to be conducted in accordance with written and approved procedures.

- A. Nuclear Criticality Safety Procedure (NCS) - 01, Limits and Controls, Revision 2, provides, in part, that all requirements of criticality safety posting and signs and criticality safety requirements in operating documents shall be followed.

The Criticality Safety Sign for the Accountability Transfer Cart, NRCART-10, Revision 0, dated October 3, 1994, specified a limit of 350 grams of Uranium-235 (U-235) per storage location when the hydrogen to uranium ratio, H/X, is greater than 20 (no moderation restriction).

Contrary to the above, from July 26 through 28, 1997, the licensee failed to comply with requirements of NRCART-10 in that three of the four storage locations contained U-235 in quantities greater than 350 grams of U-235 with each having an H/X ratio of greater than 20. Specifically, the three storage locations contained 684.50 grams of U-235 with an H/X of 127; 907.34 grams of U-235 with an H/X of 156; and 728.39 grams of U-235 with an H/X of 191, respectively. (01013)

- B. Contrary to the above, on July 26, 1997, operations involving licensed material were not conducted in accordance with written and approved procedures. Specifically, activities involving the handling of metallurgical mounts containing licensed material were performed with unapproved instructions. (01023)

Enclosure 1

- C. Paragraph 4.2.8 of Procedure E61-166, Jaw Crushing Operation, Revision 5, provides, in part, that if fuel handling, processing, storing or movement is not addressed by this document or applicable nuclear safety procedures, then (1) stop operations, and (2) tell supervision.

Contrary to the above, on July 26, 1997, activities involving licensed material were not conducted in accordance with approved procedures in that operations were not stopped, as required by Procedure E61-166, when operators determined that Paragraph 5.9 of the procedure did not adequately address processing operations for filler metallurgical mounts. (01033)

The violations constitute a Severity Level III problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, BWX Technologies 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 II, and a copy to the NRC Resident Inspector at the Naval Nuclear Fuel Division facility, 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 violation, 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 previously 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.

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

Notice of Violation

3

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 Atlanta, Georgia
this 28th day of November 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

July 8, 1997

EA 97-284

Mr. Lance Rose, President
Centre Community Hospital
1800 East Park Avenue
State College, PENNSYLVANIA 16803-6797

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-03198/97-001)

Dear Mr. Rose:

This refers to the NRC inspection conducted on January 22-23, 1997, at your facility in State College, Pennsylvania, to determine whether activities authorized by your NRC licenses were conducted safely and in accordance with NRC requirements. The inspection was continued in the NRC Region I and Headquarters offices until May 8, 1997, to review the results of an NRC consultant report submitted in March 1997 to determine whether a misadministration occurred at your facility. As described in the NRC inspection report which was sent to you on June 17, 1997, one apparent violation of NRC requirements was identified during the inspection. The NRC also concluded that a misadministration occurred at your facility. On June 26, 1997, a closed, transcribed Predecisional Enforcement Conference was conducted with you and members of your staff to discuss the violation, its cause, and your corrective actions.

Based on the information developed during the inspection, and the information provided during the conference, the NRC has determined that one violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involves the use of iridium-192 in a High Dose Rate (HDR) afterloader for surface treatment of skin cancer without your NRC license authorizing such use. Your license states that the HDR unit may be used for the treatment of humans only for interstitial, intracavitary, or bronchial therapy. The license does not authorize the use of the HDR for topical skin treatments.

The NRC is concerned that you continued to use the HDR unit for topical skin treatments even after you became aware that such treatments might not be permitted under your license. Your Radiation Safety Committee (RSC) meeting minutes, dated January 17, 1997, indicate that RSC personnel questioned whether the use of the HDR for skin treatment was authorized by the license. Your Radiation Safety Officer (RSO) stated that on November 2, 1996, he spoke with an NRC inspector and requested clarification regarding whether skin treatment was permitted under your license. This request for clarification was documented in a letter from you to the NRC, dated November 4, 1996. Although you did not receive a response to your November 4, 1996 letter, you continued such treatments without first receiving clarification from the NRC.

Since this treatment was not authorized by your license, this violation has been categorized in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III. The violation is of additional concern since it also contributed to a misadministration at your facility. Specifically, during a topical HDR treatment for skin cancer, on December 20, 1996, an apparent shift of the source position occurred. Although the right nasolabial fold of a patient was the intended treatment site during this seventh, of eleven planned fractional treatments, the shift in the source caused an unintended dose to the right side of the patient's cheek, resulting in a misadministration at the facility.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Your facility has not been the subject of escalated enforcement actions within the last two years; therefore, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective action is warranted because they were both prompt and comprehensive. These actions, which were noted in the inspection report and/or at the conference, included, (1) stopping all treatments of skin with the HDR; and (2) submitting an amendment request to the NRC seeking approval for such use.

Therefore, to emphasize the importance of prompt correction of violations, I have been authorized not to propose a civil penalty in this case. However, similar violations in the future could result in a civil penalty.

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 also confirm the commitments you made at the conference, to immediately contact the NRC and receive appropriate NRC clarification whenever you have any questions concerning your licensed activities and compliance with NRC requirements. 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 and its enclosure, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 030-03198
License No. 37-13681-01

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Pennsylvania

ENCLOSURE

NOTICE OF VIOLATION

Centre Community Hospital
State College, Pennsylvania

Docket No. 030-03198
License No. 37-13681-01
EA 97-284

During an NRC inspection conducted on January 22-23, 1997, of the licensee's facility in State College, Pennsylvania, and continued in the NRC Region I and Headquarters offices until May 8, 1997, to review the results of a consultant report as to whether a misadministration occurred at the facility, a violation of NRC requirements occurred. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the particular violation and is set forth below:

10 CFR 30.3 requires, in part, that except for persons exempted, no person shall possess or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations.

License Condition 9.7 of License No. 37-13681-01, dated April 28, 1994, authorizes use of the High Dose Rate afterloader device for interstitial, intracavitary, or bronchial therapy.

Contrary to the above, from December 2, 1996 to January 6, 1997, Centre Community Hospital used iridium-192 in a High Dose Rate afterloader for surface treatment of skin cancer without its NRC license authorizing such use. **(01013)**

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

Pursuant to the provisions of 10 CFR 2.201, Centre Community Hospital 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 8th day of July 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

October 31, 1997

EA No. 97-465

Mr. Jeffrey R. McCauslin, P.E., Director
Administrative Support Center East
Defense Logistics Agency
Defense Distribution Region East
ASCE, Building 81
14 Dedication Drive, Suite 3
New Cumberland, Pennsylvania 17070-5001

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-33261/97-002)

Dear Mr. McCauslin:

This refers to the NRC inspection conducted on September 3, 8, and 12, 1997, at the Letterkenny Army Depot, Chambersburg, Pennsylvania, to review the circumstances associated with the loss of seven 3-curie radio-luminescent tritium light sources from your facility at the Letterkenny Army Depot in Chambersburg, Pennsylvania. This also refers to the telephone conversations on September 4 and 5, 1997, between Gloria Wrights, Larry Wenger, and Michael Coogen of your staff, and Mr. Thor Oberg, NRC Region I, and on September 8 and 24, 1997, between Allen Hilsmeier of your staff and Mr. Oberg. During the inspection, a violation of NRC requirements was identified, as described in the NRC inspection report transmitted with our letter, dated October 10, 1997. On October 22, 1997, a predecisional enforcement conference was held with you and other members of your staff to discuss the violation, its causes, and your corrective actions. A copy of the enforcement conference report is enclosed.

Based on the information developed during the inspection and the information you provided during the enforcement conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding the violation are described in detail in the subject inspection report. The violation involves the failure to maintain security of tritium sources located in the Dock 2 area of Building 331. That large area, which is located outside and is not enclosed by a fence, is easily accessible by personnel inside the facility. As a result of this failure to maintain security, an individual employee, who was not involved in NRC licensed activities, was able to gain access to these seven tritium sources and take them to his residence. In the process, the individual broke one of the glass encapsulated sources resulting in contamination in the public domain (his residence), albeit of a minor nature since the tritium gas promptly dispersed and only a very small amount of contamination remained.

While the safety consequences of the broken source were low, the NRC is concerned with your failure to exercise control of the material which contributed to the loss of the sources, and one of them being damaged, causing contamination at the individual's residence. Therefore, the violation has been classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two inspections conducted in 1994 and 1991, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were both prompt and comprehensive. These actions were described during the enforcement conference and included, but were not limited to: (1) requiring all materials to be maintained in a locked locker for which only one individual has the key; (2) discussion of this item at the annual Radiation Protection Officer's workshop; (3) visiting the other depot that operates in a similar fashion and assuring improvements in security there; (4) informing other depots of the occurrence of this event; (5) issuance of a lessons learned paper that is being distributed to all depot commanders; and (6) development of a radiological incident checklist for the purpose of reviewing depot radiation safety programs.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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 and its enclosures, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 030-33261
License No. 37-30062-01

Enclosures:

- 1. Notice of Violation**
- 2. Enforcement Conference Report**

cc w/encls:

**Commonwealth of Pennsylvania
State of Delaware**

ENCLOSURE 1

NOTICE OF VIOLATION

Defense Logistics Agency
Letterkenny Army Depot
Chambersburg, Pennsylvania

Docket No. 030-33261
License No. 37-30062-01
EA 97-465

During an NRC inspection conducted on September 3, 8, and 12, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violation is listed below:

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, prior to August 28, 1997, the licensee did not secure from unauthorized removal or limit access to tritium in glass capsules (each containing 3 curies of tritium) located in the Building S-331 staging area, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material, and this contributed to the unauthorized removal of seven tritium sources by an individual employee. (01013)

This violation is classified at Severity Level III (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Defense Logistic Agency 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 31st day of October 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

December 22, 1997

EA No. 97-556

Mr. Harry R. Budenz, Jr.
Assistant Secretary
Haines & Kibblehouse, Inc.
Post Office Box 196
2052 Lucon Road
Skipack, Pennsylvania 19474

Dear Mr. Budenz:

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-22110/97-001)

This refers to the NRC inspection conducted on November 6, 19, and 21, 1997 at your facilities in Blooming Glen, Pennsylvania and Skipack, Pennsylvania, as well as at a temporary jobsite in Souderton, Pennsylvania. The purpose of the inspection was to determine whether activities authorized by your NRC license were conducted safely and in accordance with NRC requirements. This inspection was initiated after the NRC had visited the facility of Windsor Service, Inc. (Windsor), another licensee located in Reading, Pennsylvania and learned that the control of licensed activities under the Windsor license appeared to have been transferred to Haines & Kibblehouse, Inc. Specifically, all of the Windsor records had been transferred to your Blooming Glen, Pennsylvania office, and one of Windsor's gauges was being stored at your Blooming Glen, Pennsylvania facility.

As described in the NRC inspection report sent to you on November 28, 1997, several apparent violations of NRC requirements were identified during the inspection. On December 12, 1997, a predecisional enforcement conference was conducted with you, as well as personnel from Windsor Services, Inc. to discuss the violations, their causes, and your corrective actions. A copy of the enforcement conference report is enclosed. While we understand, based on the conference, that a gauge had been transferred between companies, and certain employees have responsibilities at both companies, you indicated that your company and Windsor, are separate entities, and you also stated that responsibility for the Windsor NRC license had not been transferred to your company. Therefore, NRC has evaluated separately the inspection findings related to each of the two licenses. This letter deals with the findings related to the Haines & Kibblehouse license.

Based on the information developed during the inspection, and the information provided during the conference, the NRC has determined that twelve violations of NRC requirements were identified. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations reflect two significant regulatory concerns, namely (1) failure to maintain security over byproduct materials, and (2) inadequate management control of your program.

The security violations, which are set forth in Section I of the enclosed Notice, involve the (1) failure to lock, or place in a locked outer container, a nuclear gauge (containing approximately 8 millicuries of cesium-137) so as to prevent unauthorized access or accidental removal of the sealed source from the safe shielded position; and (2) failure to maintain direct control of the gauge while not in storage. Specifically, while at a temporary jobsite in Souderton, Pennsylvania on November 19, 1997, an NRC inspector observed that a gauge operator was between 60 and 80 feet from where he had placed the gauge on a sidewalk of a bridge, and at the time, the gauge was neither locked nor under the direct surveillance of the gauge operator who was raking asphalt.

These two violations represents a significant regulatory concern because the failure to maintain appropriate security of such gauges could result in the gauges being lost or stolen. In this case, these failures could have also resulted in the gauge being damaged since construction vehicles were being operated in the vicinity of the gauge. Loss, theft, or damage to the gauge, in turn, could have created the potential to cause exposure to members of your staff, as well as members of the public. Therefore, the two violations are classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

The remaining violations are described in Section II of the enclosed Notice and involve (1) failure to notify the NRC and request that a new Radiation Safety Officer (RSO) be named on your license after an individual other than the individual listed on your license took over as the Acting RSO; (2) storage of gauges at four locations in Pennsylvania without amending your license to include those locations; (3) failure to perform an evaluation of the radiation dose to a member of the public from storing licensed material at the additional storage locations; (4) failure to perform a review of the radiation safety program content and implementation; (5) failure to perform annual refresher training to personnel; (6) failure to assure that all users of licensed material had received and successfully passed training provided in the manufacturer's course, and received instruction in the licensee's operating and emergency procedures; (7) failure to ensure that hazmat employees received required instruction; (8) failure to complete shipping papers and mark transport cases used to transport gauges containing americium-241; (9) failure to test sealed sources of licensed material for contamination and/or leakage of radioactive material at the required six month interval; and (10) failure to maintain updated copies of the RSO Accident Response Sheet.

Given the nature and number of the violations set forth in Section II, those violations indicate a significant lack of control of, and attention to, licensed activities at your facility, which collectively represent a breakdown in control of licensed activities. Of particular concern was your storage of gauges at permanent locations not listed on your license, without first obtaining NRC approval, and without any evaluation of the radiation exposure a member of the public would receive from licensed material being stored at those additional locations. These violations also have been is classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation or problem. Because your facility has not been the subject of an escalated enforcement action within the last two inspections conducted in 1993 and 1989, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted for both Severity Level III problems because your corrective actions were both prompt and comprehensive. These actions, which were described during the enforcement conference, as well as in a December 10, 1997 response to a Confirmatory Action Letter issued by the NRC on November 25, 1997, included, but were not limited to: (1) submission of a license amendment to the NRC naming the new RSO and listing areas where licensed material will be stored; (2) retraining of staff in several areas, including the importance of control and constant surveillance of licensed material at all times; (3) development of a procedure for the conduct of training; (4) establishment of a protocol for performing the annual review of the radiation safety program; (5) creation of new shipping papers; and (6) auditing of the field sites to ensure that requirements are being followed.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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 and its enclosure, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 030-22110
License No. 37-20809-01

Enclosures:

1. Notice of Violation
2. Enforcement Conference Report

ENCLOSURE

NOTICE OF VIOLATION

Haines & Kibblehouse, Inc.
Skippack, Pennsylvania

Docket No. 030-22110
License No. 37-20809-01
EA 97-556

During an NRC inspection conducted on November 6, 19 and 21, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the violations are listed below:

I. VIOLATIONS OF SECURITY REQUIREMENTS

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on November 19, 1997, the licensee did not secure from unauthorized removal or limit access to a portable gauge containing approximately 8 millicuries of cesium-137 located at a temporary jobsite in Souderton, Pennsylvania, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. Specifically, the licensee left the gauge unsecured and did not limit access to the gauge while performing other duties approximately 60 feet away. (01013)

- B. Condition 17 of License No. 37-20809-01 requires that each portable gauge have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The gauge or its outer container must be locked when in transport, storage or when not under the direct surveillance of an authorized user.

Contrary to the above, on November 19, 1997, a portable gauge located at a temporary jobsite in Souderton, Pennsylvania, was not locked or in an outer locked container and the gauge was not under the direct surveillance of an authorized user. Specifically, the unlocked portable gauge was left unattended about 60 feet from an authorized user who was occupied with other tasks. (01023)

These violations are categorized in the aggregate as a Severity Level III problem (Supplements IV & VI).

II. OTHER VIOLATIONS OF NRC REQUIREMENTS

- A. 10 CFR 20.1101(c) requires that each licensee periodically (at least annually) perform a review of the radiation safety program content and implementation.

Contrary to the above, in 1994, 1995, and 1996, the licensee did not perform a review of the radiation safety program content and implementation. (02013)

- B. 10 CFR 30.34(c) requires, in part, that each person licensed by the Commission pursuant to the regulations in 10 CFR Part 30 confine his possession of the byproduct material to the locations authorized in the license.

Contrary to the above, as of November 21, 1997, the licensee possessed byproduct material at locations other than those listed in Condition 10 of the license. Specifically, the licensee possessed byproduct material at 2052 Lucon Road, Skippack, Pennsylvania; Locust Ridge Quarry, Route 282, Pocono Lake, Pennsylvania; Handewerk Materials, Old Farm Road, Hummelston, Pennsylvania; and Lehigh Valley Site Contractors, 211 Lower Mud Run Road, Easton, Pennsylvania; locations not authorized for the storage of byproduct material and not temporary jobsites. (02023)

- C. 10 CFR 20.1501 requires that each licensee make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation levels, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present.

Pursuant to 10 CFR 20.1003, *survey* means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

Contrary to the above, as of November 21, 1997, the licensee did not make surveys to assure compliance with 10 CFR 20.1301(a), which limits radiation exposure to individuals of the general public to 100 millirem in a year. Specifically, the licensee stored portable gauges (containing approximately eight millicuries of cesium-137 and 44 millicuries of americium-241, both byproduct material) at facilities in Skippack, Pennsylvania, Pocono Lake, Pennsylvania, Hummelston, Pennsylvania, and Easton, Pennsylvania, and at the time, the licensee did not perform an evaluation of the radiological conditions and potential hazards of the presence of radioactive materials to individuals of the general public. (02033)

- D. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR Parts 170 through 189 appropriate to the mode of transport.

Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

1. 49 CFR 172.203(c)(2) requires that the letters "RQ" be entered on the shipping paper either before or after the basic description required for each hazardous substance.

Contrary to the above, as of November 21, 1997, the licensee transported outside the confines of its plant portable gauges containing approximately 44 millicuries of americium-241, a hazardous material, and the letters "RQ" were not entered either before or after the description on the shipping paper that accompanied the shipment. (02043)

2. 49 CFR 172.324(b) requires that for each non-bulk package that contains a hazardous substance that the letters "RQ" be marked on a package in association with the proper shipping name.

Contrary to the above, as of November 21, 1997, non-bulk packages containing a hazardous substance (i.e., 44 millicuries of americium-241) were transported by the licensee and the letters "RQ" were not marked on the package in association with the shipping name. (02053)

3. 49 CFR 172.702 requires that each hazmat employer ensure that each hazmat employee is trained and tested, and that no hazmat employee performs any function subject to the requirements of 49 CFR Parts 171-177 unless trained, in accordance with Subpart H of 49 CFR Part 172. The terms Hazmat Employer and Hazmat Employee are defined in 49 CFR 171.8.

Contrary to the above, as of November 21, 1997, the licensee did not provide training for its hazmat employees as required by Subpart H to 49 CFR Part 172, and the licensee otherwise meets the definition of hazmat employer in 49 CFR 171.8. (02063)

- E. Condition 11 of License No. 37-20809-01 requires that licensed material be used by, or under the supervision and in the physical presence of individuals who have successfully completed the manufacturer's training program for gauge users, have been instructed in the licensee's routine and emergency operating procedures and who have been designated in writing by the Radiation Safety Officer (RSO).

Contrary to the above, as of November 19, 1997, licensed material was used by individuals who had either not successfully completed the manufacturer's training program for gauge users or who had not been designated in writing by the RSO. Specifically, three individuals were listed on the sign in/sign out logs for the portable gauges as having used the portable gauges and the RSO did not have a record of their training in accordance with Condition 11 of the license (One individual received radiation safety training and portable gauge use training from other than a manufacturer, and two individuals had been trained but had not been designated in writing by the RSO). (02073)

- F. Condition 12 of License No. 37-20809-01 requires that a specifically named individual perform the duties of the RSO.

Contrary to the above, as of November 21, 1997, the specifically named individual was not performing the duties of the RSO. Specifically, the RSO named on the license stopped performing the duties of the RSO in mid-1995. (02083)

- G. Condition 13.A. of License No. 37-20809-01 requires that sealed sources and detector cells containing licensed material be tested for leakage and/or contamination at intervals not to exceed six months or at such other intervals as are specified by the certificate of registration referred to in 10 CFR 32.210, not to exceed three years.

Contrary to the above, as of November 21, 1997, sealed sources containing licensed material were not tested for leakage and/or contamination at intervals not exceeding six months and the certificate of registration referred to in 10 CFR 32.210 did not specify another leak test interval. Specifically, three devices containing approximately 8 millicuries of cesium-137, a licensed material, were leak tested on October 16, 1996 and November 10, 1997; February 17, 1997 and September 10, 1997; February 17, 1997 and October 30, 1997, respectively; and a fourth device containing approximately 8 millicuries of cesium-137 and 44 millicuries of americium-241, licensed materials, was leak tested on February 8, 1996 and October 29, 1997. All of the above intervals exceeded six months. (02093)

H. Condition 20 of License No. 37-20809-01 requires that the licensee conduct its program in accordance with the statements, representations and procedures contained in the application dated April 19, 1995 and the letter dated July 7, 1995.

1. Item 2 of the July 7, 1995 letter requires that the licensee perform annual refresher training to the authorized users of the portable gauges.

Contrary to the above, as of November 21, 1997, the licensee did not provide annual refresher training to the authorized users of portable gauges in 1995 and 1996. (02103)

2. Item 10.7 of the April 19, 1995 application requires that the licensee maintain updated copies of the Radiation Safety Officer Accident Response Sheet.

Contrary to the above, as of November 21, 1997, the licensee did not maintain update copies of the Radiation Safety Officer Accident Response Sheet. Specifically, the Radiation Safety Officer Accident Response Sheet had not been updated since Mid-1995 when the RSO discontinued performing his duties. (02113)

These violations are categorized in the aggregate as a Severity Level III problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Haines & Kibblehouse, Inc. 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 22nd day of December 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

July 1, 1997

EA 97-158

Mr. Harry W. Gibson
H&G Inspection Company, Inc.
P.O. Box 721856
Houston, Texas 77272

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report 030-29319/97-01)

Dear Mr. Gibson:

This refers to your June 6, 1997, letter, which H&G Inspection Company, Inc. (H&G) submitted in response to the apparent violation identified in NRC Inspection Report 030-29319/97-01 issued on May 12, 1997. The NRC's inspection was completed on March 27, 1997. As indicated in the NRC letter transmitting the inspection report, the apparent violation involved H&G's failure to limit the occupational radiation exposure of a radiographer's assistant within NRC limits in 10 CFR 20.1201(a)(1)(i). You were given a choice of requesting a predecisional enforcement conference or submitting a written response to the apparent violation. You chose to submit a written response.

In your June 6 letter, you disputed the apparent violation and stated that H&G did not believe that the exposure recorded on the radiographer assistant's TLD for the month of September 1996 was accurate. You stated that H&G has found ICN Dosimetry (ICN), your TLD vendor, to be unreliable on several occasions and you provided your perspective as to how ICN could have provided erroneous results. Your arguments can be summarized as equipment and staffing problems experienced by ICN.

The NRC reviewed this information during the inspection and through discussions with ICN representatives. As stated in the inspection report, we discussed with ICN its processes and quality controls. We note that: (1) ICN reviewed other customers' badges processed within the same batch and found them to be accurate, indicating that there were no processing problems of the batch; (2) the "malfunction" to which you referred was actually a delay in transferring computer disks from Illinois to California, an item which would not have affected the TLD reading; and (3) although ICN reported an exposure for a separate individual of 192 rem, ICN's report was limited to the exposure the TLD received, and there was a basis in that case to conclude that the individual was not wearing the TLD at the time of the exposure. We also note that, as discussed in the inspection report, the subject individual in this case routinely received monthly exposures higher than other H&G radiography personnel during 1996, even during months in which H&G used another TLD vendor.

Before accepting any licensee's argument that one of its employees was not overexposed, the NRC must critically review all information. Given the lack of conclusive evidence that

an H&G radiographer's assistant was not wearing his TLD when it was exposed or that the TLD vendor did not properly process the TLD, the NRC accepts the TLD exposure as a valid indication of the exposure to the individual during the monitoring period in question. It is important to note that this does not mean that H&G's radiation protection program had significant weaknesses. To the contrary, although this exposure indicates a need to assure that all employees are following H&G's radiation safety practices, the inspection found no significant weaknesses in H&G's radiation safety program.

Therefore, based on the information developed during the inspection, and our review of the information that you provided in your June 6 response to the inspection report, the NRC has determined that a violation of 10 CFR 20.1201 occurred. The violation involves a cumulative annual radiation exposure of 5.77 rems to a radiographer's assistant. This violation has been classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement action within the last two inspections (prior to the inspection at issue), the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. The NRC has determined that your corrective actions were prompt and sufficiently comprehensive and therefore, credit is warranted. Your corrective actions included: 1) immediately removing the radiographer's assistant from radiography work upon receipt of the exposure report from your vendor in December 1996; 2) performing an investigation of the possible causes of the individual's exposure, including an evaluation of the individual's work practices; and 3) conducting a 40-hour radiation safety class for the radiographer's assistant and other radiography personnel to emphasize ALARA principles.

Accordingly, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future, particularly violations of a similar nature, could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action which may subject you to more frequent inspection by NRC.

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, and the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report 030-29319/97-01 and your letter dated June 6, 1997. Therefore, you are not required to respond to this violation 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.

H&G Inspection Co.

-3-

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your June 6 response will be placed in the NRC Public Document Room.

Sincerely,

Ellis W. Merschoff
Regional Administrator

Docket No. 030-29319
License No. 42-26838-01

Enclosure: Notice of Violation

cc w/Enclosure:
State of Wyoming
State of Texas

NOTICE OF VIOLATION

H&G Inspection Company, Inc.
Houston, Texas

Docket No. 030-29319
License No. 42-26838-01
EA 97-158

During an NRC inspection completed March 27, 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 20.1201(a)(1)(i) requires, with exceptions not applicable here, that the licensee control the occupational dose to individual adults to an annual dose limit of 5 rems total effective dose equivalent.

Contrary to the above, the licensee did not limit the annual occupational dose to an adult radiographer's assistant to 5 rems, total effective dose equivalent. Specifically, the individual received 5.77 rems, total effective dose equivalent, for calendar year 1996.

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

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, and the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 030-29319/97-01 and a letter from H&G Inspection dated June 6, 1997. Therefore, no response to this violation is required. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it 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.

Because any response you choose to submit 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 1st day of July 1997

December 23, 1997

EA 97-498

Hospital San Pablo
ATTN: Mr. Jorge Matta
Administrator
P. O. Box 236
Bayamón, Puerto Rico 00960-6036

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT 52-21325-01/97-01)

Dear Mr. Matta:

This refers to the special, unannounced inspection conducted by this office on October 1, 1997, at your facility in Bayamón, Puerto Rico. The purpose of the inspection was to review the circumstances surrounding the loss of control and subsequent inadvertent incineration of licensed materials. The incident was verbally reported to the Nuclear Regulatory Commission (NRC) on May 14, 1997, and a written report was submitted to the NRC on May 23, 1997. The results of the inspection were discussed with you on October 1, 1997, and were formally transmitted to you by letter dated October 28, 1997. That letter also provided you the opportunity to respond to the apparent violations in writing or request a predecisional enforcement conference. Subsequently, you declined a conference, and by letter dated November 24, 1997, you admitted the apparent violations and stated that the inspection report appropriately described the apparent violations, the root causes, and your corrective actions to preclude recurrence. No additional information was provided in your submittal. We have reviewed the inspection results and your May 23 and November 24, 1997, letters and have concluded that sufficient information is available to determine the appropriate enforcement action in this matter.

Based on the information developed during the inspection and subsequent reviews, the NRC has determined that violations of regulatory requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. The violations are associated with work performed on April 15, 1997, at your facility which involved the demolition and relocation of the room used to store radioactive waste held for decay-in-storage. Three violations occurred: (1) the failure to secure licensed materials from unauthorized removal; (2) unauthorized disposal of the licensed materials; and (3) the failure to monitor, with a radiation survey meter, radioactive waste held for decay-in-storage prior to disposing of it.

Specifically, on April 15, 1997, unqualified engineering personnel obtained a key to the decay room to remove material prior to demolition of the room. Based on perceived instructions from a nuclear medicine technologist, material dated 1996 and earlier was removed and transferred to the Environmental Services Department to be discarded as biomedical waste, and included six reference sources. Accounting for decay, the reference sources consisted of two non-NRC regulated cobalt-57 sources containing 0.03 and 0.47 microcuries (μCi) each, two cobalt-60 (Co-60) sources containing 18 and 28 μCi each, and two cesium-137 (Cs-137) sources containing 77 and 86 μCi each. The waste, was transferred the same day to an incineration contractor and was subsequently incinerated. The missing sources were identified by a nuclear medicine technologist on May 13, 1997, upon accessing the new decay room. The root causes of the violations were inadequate supervision of unqualified licensee employees performing the demolition and source removal activities and miscommunications between personnel regarding which materials could be discarded.

In this case, the actual safety consequences of the violations were low in that some precaution was exercised in handling the reference sources because they were believed to be hazardous biochemical waste, and the determination that, due to the incineration parameters, 10 CFR Part 20, Appendix B limits for release of licensed materials to unrestricted areas were not exceeded. However, the violations are of significant regulatory concern because they indicated a lack of attention to licensed activities and involved the conduct of activities by technically unqualified personnel. Individuals handling the reference sources were unaware of the potential radiation hazard and consequently, took no action to monitor their radiation exposure or control the material. It was fortuitous that the lack of controls and awareness did not result in unnecessary radiation exposures to the workers or the public or, contamination or incinerator effluent which exceeded regulatory limits. Therefore, in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, the three violations are classified, in the aggregate, as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III problem. Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process described in Section VI.B.2 of the Enforcement Policy. As documented in detail in the inspection report and your May 23, 1997, report to the NRC, your corrective actions included: (1) conduct of a prompt and thorough investigation of the missing sources including a response to the contract incinerator facility; (2) segregation of toxic materials from radioactive materials in storage areas; (3) initiation of key control to the decay room; (4) cessation of the storage of reference sources in the decay room; (5) implementation of a policy which provides that items stored in the decay facility can only be removed under the supervision of the Nuclear Medicine Laboratory Supervisor or the Radiation Safety Officer; (6) prompt reporting of the incident to the NRC; (7) implementation of disciplinary actions against certain employees; and (8) plans to begin utilizing radiopharmacy services resulting in the reduced build-up of radioactive waste. Based on these facts, the NRC concluded that credit was warranted for the factor of Corrective Action.

Therefore, to encourage prompt and comprehensive correction of violations and in recognition of the absence of previous escalated enforcement action at your facility, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that the reasons for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved are adequately addressed on the docket in NRC Inspection Report No. 52-21325-01/97-01, dated October 28, 1997, and your May 23 and November 24, 1997, letters. Therefore, no response to this letter is required unless the description therein or described above 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. With issuance of the Notice of Violation, Escalated Enforcement Items (EEI) 52-21325-01/97-01-01, EEI 51-21325-01/97-01-02, and 51-21325-01/97-01-03 are closed.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any response will be placed in the NRC Public Document Room (PDR). To the extent possible, a response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

If you have any questions regarding this letter, please contact Charles M. Hosey, Acting Deputy Director, Division of Nuclear Materials Safety at (404) 562-4701.

Sincerely,

Original signed by
Luis A. Reyes

Luis A. Reyes
Regional Administrator

Docket No. 030-20510
General License No. 52-21325-01

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Puerto Rico

Hospital San Pablo
ATTN: Mr. Jorge De Jesús
Executive Director
P. O. Box 236
Bayamón, PR 00960-6036

Distribution w/encl: See Page 4

NOTICE OF VIOLATION

Hospital San Pablo
Bayamón, Puerto Rico

Docket No. 030-20510
License No. 52-21325-01
EA 97-498

During a Nuclear Regulatory Commission (NRC) inspection conducted on October 1, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access, licensed materials that are stored in controlled areas.

Contrary to the above, on April 15, 1997, the licensee did not secure from authorized removal licensed materials consisting of cobalt-60 (Co-60) and cesium-137 (Cs-137) dose calibrator reference sources that were stored in the licensee's radioactive waste decay room, a controlled area. Specifically, the licensee permitted unqualified personnel from the licensee's engineering staff to remove four reference sources containing 86 and 77 microcuries (μCi) of Cs-137 and 28 and 18 μCi of Co-60, respectively, for transfer to a disposal facility. (01013)

- B. 10 CFR 20.2001(a) requires that the licensee dispose of licensed material only by certain specified procedures. These procedures include: (1) by transfer to an authorized recipient; (2) by decay in storage; (3) by release in effluents within the limits of 10 CFR 20.1301; or (4) as authorized under 10 CFR 20.2002 through 10 CFR 20.2005.

Contrary to the above, on April 15, 1997, the licensee disposed of four reference sources containing 86 and 77 microcuries (μCi) of Cs-137 and 28 and 18 μCi of Co-60, respectively, by a method prohibited by 10 CFR 20.2001(a). Specifically, the reference sources were disposed of by release to a commercial incinerator which was not authorized to receive the material. (01023)

- C. 10 CFR 35.92(a)(2) requires that, before disposing of radioactive waste held for decay-in-storage, the licensee monitor the byproduct material at the container surface to determine that its radioactivity cannot be distinguished from the background radiation level with a radiation detection survey meter set on its most sensitive scale and with no interposed shielding.

Contrary to the above, on April 15, 1997, the licensee failed to monitor, with a radiation survey meter, radioactive waste held for decay-in-storage prior to disposing of it. (01033)

These violations constitute a Severity Level III problem (Supplements IV and VI).

Enclosure

Notice of Violation

2

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved are already adequately addressed on the docket in NRC Inspection Report No. 52-213250-01/97-01 dated October 28, 1997, and in your May 23 and November 24, 1997, letters. However, Hospital San Pablo is required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to Notice of Violation," and send it to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D. C. 20555 with a copy to the Regional Administrator, Region II, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-001.

Under the authority of Section 182 of the Act, 42 U. S. C. 2232, any response shall be submitted under oath or affirmation.

Because your response, if you choose to provide one, 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 Atlanta, Georgia
this 23rd day of December 1997

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

December 19, 1997

EA 97-503

Dr. Gerald Bepko, Chancellor
Indiana University Medical Center
Administrative Building 104B
355 Lansing St.
Indianapolis, IN 46202

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report 030-01609/97001(DNMS) and Office of
Investigations Report 3-97-021)

Dear Dr. Bepko:

This refers to the inspection conducted between May 28 and June 5, 1997, and the investigation conducted by the NRC Office of Investigations (OI) between June 6, 1997 and October 17, 1997, at the Indiana University Medical Center (IUMC) in Indianapolis, Indiana. The inspection was conducted to review the activities authorized by License Nos. 13-02752-03 and 13-02752-08. An inspection report documenting our findings was sent to you by letter dated July 21, 1997. During the inspection an apparent violation requiring further NRC review was identified. Our review included an OI investigation. A synopsis of the OI report is enclosed.

Based on the information developed during the inspection and the OI investigation, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice).

The violation resulted from three separate episodes of deliberate incorrect dating of monthly survey records by laboratory personnel. Given the willful nature of the violation, we considered escalated enforcement action. However, because IUMC staff identified each instance of record falsification in a timely manner and promptly implemented corrective actions, escalated enforcement is not being proposed. Nonetheless, deliberate violations are of significant concern to the NRC. It is essential that the NRC be able to maintain the highest trust in individuals working with licensed material, and that licensees manage their programs to ensure that personnel fully understand the importance of complying with license requirements.

The NRC is corresponding with each of the involved individuals concerning the willful violation of NRC requirements. You will receive copies of this correspondence.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

G. Bepko

-2-

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, the enclosures, and your response to this letter will be placed in the NRC Public Document Room. 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.

We will gladly discuss any questions you have concerning this matter.

Sincerely,

Cynthia D. Pederson, Director
Division of Nuclear Materials Safety

License Nos.: 13-02752-03
13-02752-08

Docket Nos.: 030-01609
030-09792

Enclosures: 1. Notice of Violation
2. Synopsis of OI Report No. 3-97-021

cc w/encls: Mack Richard, Radiation Safety Officer

NOTICE OF VIOLATION

Indiana University Medical Center
Indianapolis, Indiana

License No. 13-02752-03
Docket No. 030-01609
EA 97-503

During an NRC inspection conducted from May 28 through June 5, 1997, and the NRC Office of Investigations review between June 6, 1997 through October 17, 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 30.9(a) requires, in part, that information required by license condition to be maintained by the licensee shall be complete and accurate in all material respects.

Condition 33 of License No. 13-02752-03 requires the licensee to conduct its program in accordance with the statements, representations and procedures contained in a letter dated October 14, 1992. Section II of the referenced letter entitled "Laboratory Surveys and Monitoring Required by PHs", requires surveys to be performed in all Class C or D laboratories each month licensed material is used.

Contrary to the above, on February 26, 1997, October 11, 1996 and July 1, 1996, three individuals deliberately created NRC required laboratory survey records in months when such surveys were not performed for either Class C or D laboratories.

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

Pursuant to the provisions of 10 CFR 2.201, Indiana University Medical Center 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 III, 801 Warrenville Road, Lisle, Illinois 60532-4351 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 violation, 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.

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 Lisle, Illinois
this 19th day of December 1997

SYNOPSIS

This investigation was initiated by the Nuclear Regulatory Commission, Office of Investigations, Region III, on June 6, 1997, to determine whether three employees of the Indiana University Medical Center (IUMC), 541 Clinical Drive, Indianapolis, Indiana, 46202-5111, deliberately falsified monthly radiation surveys in three separate events.

Based on the evidence developed during the investigation, it was determined that three IUMC employees deliberately falsified monthly radiation surveys in three separate events.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

November 7, 1997

EA 97-393

Mr. Robert Herbst, President
Intergrated Industrial Systems, Inc.
475 Main Street
Yalesville, Connecticut 06492-1723

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-20102/97-001)

Dear Mr. Herbst:

This refers to the NRC inspection conducted on July 31 and August 1, 1997, at your facility. The inspection was conducted to review your distribution of nuclear gauging devices to general licensees. During the inspection, violations of NRC requirements were identified, as described in the NRC inspection report transmitted with our letter dated September 8, 1997. Also, a Confirmatory Action Letter (CAL) was issued to you on August 7, 1997 to confirm your commitment to take certain corrective actions. You provided your response to the CAL on August 29, 1997. In addition, in the September 8, 1997 letter, the NRC provided you an opportunity to either respond in writing to the apparent violations addressed in the inspection report or request a predecisional enforcement conference. You responded to the apparent violation in an October 4, 1997 letter to the NRC.

Based on the information developed during the inspection and the information you provided in your August 29, 1997 response to the CAL, as well as your October 4, 1997 response to the inspection report, the NRC has determined that five violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations involve (1) manufacturing and distribution of certain nuclear gauges in a manner that was not in accordance with the registration certificate; (2) making modifications to the devices, without the required approval by the Technical Director; (3) failure to maintain records of test results of the devices; (4) approval of a nonconforming part as acceptable for use, without the Production Manager, Technical Director, and the assigned Engineer indicating their approval, as required; and (5) the failure to perform required annual audits.

These violations represent a significant regulatory concern in that the failure to manufacture and distribute the gauges in accordance with the registration certificate could result in the malfunction of the gauge while in the possession of a general licensee, and the resultant potential for unnecessary radiation exposure. The violations demonstrate a significant lack of oversight and control of licensed activities. As such, the violations have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were both prompt and comprehensive. These actions, which were described in your August 29, 1997 and October 4, 1997 letters to the NRC, included, but were not limited to: (1) commitments to manufacture the devices in accordance with the Registration Certificate or to obtain a license amendment; (2) revisions of procedures and records; (3) retraining of staff; and (4) plans to ensure audits of activities.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in your letters to the NRC dated August 29, 1997, and October 4, 1997. Therefore, you are not required to respond to this letter 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, and its enclosure, as well as your response if you choose to provide one, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 030-20102
License No. 06-21253-01

Enclosure: Notice of Violation

cc w/encl:
State of Connecticut

ENCLOSURE

NOTICE OF VIOLATION

Intergrated Industrial Systems, Inc.
Yalesville, Connecticut

Docket No. 030-20102
License No. 06-21253-01
EA 97-393

During an NRC inspection conducted on July 31 and August 1, 1997, for which an exit meeting was conducted on August 1, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violations are listed below:

- A. 10 CFR 32.210(a) states that manufacturer or initial distributor of a sealed source or device containing a sealed source whose product is intended for use under a specific license may submit a request to NRC for evaluation of radiation safety information about its product and for its registration.

10 CFR 32.210(f)(1) and (2) states that the person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with (1) the statements and representations, including quality control program contained in the request and (2) the provisions of the registration certificate.

Contrary to the above, from March 21, 1995 to August 1, 1997, the licensee manufactured and distributed certain nuclear gauges in a manner that was not in accordance with of the registration certificate, as evidenced by the following examples.

1. Registration Certificate NR-396-D-101-B specifies that approved shutter thickness for the RSS-06 gauges is 0.125 inch; however, the licensee revised the drawings for the RSS-06 gauges and distributed gauges that had a shutter thickness of 0.120 inch.
2. Registration Certificate NR-396-D-101-B specifies that the approved securing bolt for the RSS-06 gauges is to have a machined end; however, the licensee revised the drawings for the RSS-06 gauges and distributed gauges that incorporated a standard 0.25 inch securing bolt without a machined end.
3. Registration Certificate NR-396-D-101-B specifies that the approved materials of construction for the source plug and mounting plates is to be low carbon steel; however, the licensee revised the drawings for the RSS-06 gauges and distributed gauges that incorporated stainless steel source plugs and mounting plates.
4. Registration Certificate NR-396-D-101-B specifies that the approved tolerances for the source housing dimensions were +/-0.01 inches for the licensee's gauges; however, seven RSS-06 castings were inspected against drawing 300-633, revision A, and did not meet the specifications included on the drawings. At least one device was distributed under this license where at least one dimension was not within tolerance for the casting.

B. Condition 18 of License No. 06-21253-01 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in the letter dated December 21, 1993. Appendix D to this letter contains the licensee's Quality Assurance (QA) program.

1. Section 3 of the QA program requires that design changes to devices be approved by the Technical Director.

Contrary to the above, as of August 1, 1997, a number of design modifications were made to the RSS-06 devices, as described in Violation A herein, and these changes were not approved by the Technical Director as required.

2. Section 10 of the QA program requires that records of results of inspections be maintained.

Contrary to the above, as of August 1, 1997, adequate records of results of inspections for Part 300-63302 (sight glass) were not maintained in that the records reviewed during the inspection included the initials of the persons that performed the inspections and whether the materials passed or failed the inspection, but did not include the results of the inspection. In addition, for numerous parts such as the shutter and the source plug, there were no records of inspections.

3. Section 15 of the QA program requires that when nonconforming parts are deemed acceptable for use, the Production Manager, Technical Director, and the assigned engineer shall indicate their approval.

Contrary to the above, on June 18, 1996, a nonconforming part, namely, the source house castings, was deemed acceptable for use, and the Production Manager, Technical Director, and the assigned Engineer did not indicate their approval. Specifically, there was one example where a nonconformance (i.e., seven housings outside the tolerance of ± 0.01 inches) was not signed off by all three of these persons.

4. Section 18 of the licensee's quality assurance program requires performance of annual audits by an individual not normally involved in the QA program. It also requires a written report to be prepared and reviewed by management.

Contrary to the above, as of August 1, 1997, annual audits were not performed.

These violations are categorized in the aggregate as a Severity Level III problem (Supplement VI).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in letters from the Licensee dated August 29, 1997, and October 4, 1997. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Dated at King of Prussia, Pennsylvania
this 7th day of November 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 25, 1997

EA 97-438

Gary W. Jaworski, Ph.D.
Principal
Jaworski Geotech, Inc.
150 Zachary Road
Manchester, New Hampshire 03109-5614

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-34372/97-001)

Dear Dr. Jaworski:

This refers to the NRC inspection conducted on August 5 and 7, 1997, at the above address in Manchester, New Hampshire; the field office at 1 Hartford Square, New Britain, Connecticut; and temporary jobsites in Hamden and Naugatuck, Connecticut, the findings of which were discussed with you during an exit meeting on August 7, 1997. The inspection reviewed the circumstances associated with an event which you reported to the NRC Region I staff on October 14, 1994 involving the loss of a portable nuclear moisture/density gauge at a temporary jobsite in Bristol, Connecticut on October 13, 1994. During the inspection, violations of NRC requirements were identified, as described in the enclosed Notice of Violation (Notice). On October 25, 1994, you provided the NRC a written report, pursuant to 10 CFR 20.2201, which included your corrective and preventive actions.

Based on the information developed during the inspection and the information you provided in your October 25, 1994 report, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice. The most significant violation (Violation A in the enclosed Notice), involves the failure to control and maintain constant surveillance of licensed material not in storage in an unrestricted area at the temporary jobsite. This failure contributed to the gauge, which contained 9 millicuries of cesium-137 and 50 millicuries of americium-241, apparently being stolen from the temporary jobsite. Specifically, the technician who was using the gauge for compaction measurements at the jobsite, left the gauge unattended for approximately 30 minutes to examine work to be conducted in a ditch.

The NRC recognizes that you took prompt corrective actions which were examined at the time of the inspection. Nonetheless, this violation represents a significant regulatory concern because the failure to maintain appropriate security of material resulted in the loss of the gauge. The violation is classified in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy in effect at the time this violation occurred, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were both prompt and comprehensive. These actions, which were described in your letter to the NRC, included: (1) conduct of in-house training sessions with all gauge operators within the week following the event; (2) review of the Radiation Safety Program by management; (3) circulation of a memorandum to all users of gauges concerning the loss of the gauge and importance of maintaining security of material; and (4) placing newspaper, radio, and television announcements at the time along with a reward offer in an effort to retrieve the gauge.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

In addition to Violation A, three other violations of NRC requirements were also identified. These violations (Violations B.1, B.2 and C in the Notice) involve (1) failure of a driver and carrier to clearly distinguish the shipping paper when it is carried with other papers by either tabbing it or by having it appear first; (2) failure to block and brace packages containing hazardous materials so that they cannot change position during conditions normally incident to transportation; and (3) failure to complete the source utilization log each time a portable gauge was removed from and returned to the storage location. These violations are each classified individually at Severity Level IV.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements. However, the NRC has concluded that information regarding the reasons for Violation A, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in your October 25, 1994 letter to the NRC. Therefore, you are not required to respond to Violation A 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.

Related to the violations, your response should also address how you keep track of the location of each of your gauges, and under which license they are possessed since you also possess Agreement State licenses from New Hampshire and Massachusetts in addition to your NRC license. Therefore, in your response to the enclosed Notice, please describe what procedures you have in place to better track under which license each of your portable gauges is possessed at any given time.

Jaworski Geotech, Inc.

3

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Hubert J. Miller *fr*
Regional Administrator

Docket No. 030-34372
License No. 28-30018-02

Enclosure: Notice of Violation

cc w/encl:
State of New Hampshire
State of Connecticut
Commonwealth of Massachusetts

ENCLOSURE

NOTICE OF VIOLATION

Jaworski Geotech, Inc.
Manchester, New Hampshire

Docket No. 030-34372
License No. 28-30018-02
EA 97-438

During an NRC inspection conducted on August 5 and 7, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the violations are listed below:

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on October 13, 1994, the licensee did not secure from unauthorized removal or limit access to a portable moisture/density gauge (containing approximately 9 millicuries of cesium-137 and 50 millicuries of americium-241) located in Bristol, Connecticut at a temporary jobsite, which was an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. (01013)

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

- B. 10 CFR 71.5 requires, in part, that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, comply with the applicable requirements of the Department of Transportation regulations in 49 CFR Parts 170 through 189 appropriate to the mode of transport.

Pursuant to 49 CFR 172.101, radioactive material is classified as a hazardous material.

1. 49 CFR 177.817(e) requires, in part, that the driver and the carrier clearly distinguish the shipping paper, if it is carried with other shipping papers or other papers of any kind, by either distinctively tabbing it or by having it appear first.

Contrary to the above, on August 7, 1997, during the transport of a portable moisture/density gauge to a temporary jobsite in Hamden, Connecticut, the driver and the carrier did not clearly distinguish the shipping paper when it was carried with other papers by either distinctively tabbing it or having it appear first. (02014)

This is a Severity Level IV violation (Supplement V).

2. 49 CFR 177.842(d) requires that packages must be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on August 7, 1997, a package containing a portable moisture/density gauge (with approximately 8 millicuries of cesium-137 and 44 millicuries of americium-241 radioactive materials), was transported in the trunk of a vehicle to a temporary jobsite in Naugatuck, Connecticut, and the package was not blocked so that it could not change position during conditions normally incident to transportation. (03014)

This is a Severity Level IV violation (Supplement V).

- C. Condition 19 of License No. 28-30018-02 requires, in part, that the licensee conduct its program in accordance with the statements, representations and procedures contained in its application dated March 8, 1996.

Item 10.2.B.1. of the application requires that a utilization log be used to control the gauge's whereabouts by signing the gauge out and back in when returning the gauge from the field.

Contrary to the above, on several occasions in 1997, the utilization log was not used to control the gauge's whereabouts by signing the gauge back in when returning the gauge from the field. For example, the utilization log was not completed when a gauge was returned from the field on July 13, 15, and 23, 1997, and the period of July 30, 1997 to August 6, 1997. On these dates, a gauge was taken to a field site, and brought back to the storage location each day. (04014)

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

Pursuant to the provisions of 10 CFR 2.201, Jaworski Geotech, Inc. is hereby required, except for Item A., 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 25th day of September 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

November 17, 1997

EA 97-433

Mr. Michael H. Homan, Office Manager
Law Engineering, Inc.
1540 North 107th East Avenue
Tulsa, Oklahoma 74116

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT 030-31876/97-01)

Dear Mr. Homan:

This refers to the October 7, 1997, letter you submitted in response to the apparent violation identified in NRC Inspection Report 030-31876/97-01, issued on September 17, 1997. The NRC inspection was completed on September 11, 1997. As indicated in the letter which transmitted the inspection report, one apparent violation was identified involving a failure to maintain surveillance and control of a portable moisture/density gauge containing NRC-licensed material. You were given a choice of requesting a predecisional enforcement conference or submitting a written response to the apparent violation. You chose to submit a written response.

Based on the information developed during the inspection, and the information that you provided in your October 7 response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. The violation is described in the enclosed Notice of Violation, and the circumstances surrounding the violation were described in the NRC's inspection report. Briefly, the violation occurred when a gauge user inadvertently left a portable gauge at a construction site with the source rod still in the extended position. The gauge was out of Law Engineering, Inc.'s control for approximately 5 hours, a violation of NRC requirements to maintain control and surveillance of licensed material.

Fortunately, there were no safety consequences as a result of this lapse in control. A contractor at the construction site picked the gauge up by its carrying handle, which automatically returned the source rod to its shielded position, and transported the gauge to his home where it was picked up by Law Engineering, Inc. Nonetheless, the very purpose of the NRC's security requirements is to prevent licensed material from presenting an undue risk to members of the public. The NRC considers failures of this type a matter of significant regulatory concern because there is a potential for public safety to be compromised. Thus, this violation has been classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600.

In your October 7 letter, you acknowledged the violation and described the following corrective actions: 1) immediate efforts to recover the gauge when determined to be missing; 2) immediate notification of the NRC; 3) special training sessions for all gauge users to discuss the incident and prevent future incidents and to review relevant requirements; 4) verbal reprimand of the delinquent gauge user; 5) plans to work more

closely with the radiation safety officer in the oversight and implementation of licensed activities; and 6) increased frequency of audits and refresher training.

In accordance with the NRC Enforcement Policy, a civil penalty with a base value of \$2,750 is considered for a Severity Level III violation. Because your company had *not* been the subject of escalated enforcement action within the last two inspections (prior to the inspection at issue), the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy (Note: Because you had not received escalated action in the last two inspections, we did not consider the circumstances surrounding the identification of the violation). Given that the corrective actions described above were prompt and sufficiently comprehensive, credit is due for your corrective actions, resulting in no civil penalty being assessed in this case.

Accordingly, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future, particularly violations of a similar nature, could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action which may subject you to more frequent inspection by NRC.

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, and the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report 030-31876/97-01 and your letter dated October 7, 1997. Therefore, you are not required to respond to this violation 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 if you choose to submit one, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Ellis W. Merschoff
Regional Administrator

Docket: 030-31876
License: 35-27045-01

Enclosure: Notice of Violation

cc w/Enclosure: State of Oklahoma

NOTICE OF VIOLATION

Law Engineering, Inc.
Tulsa, Oklahoma

Docket: 030-31876
License: 35-27045-01
EA 97-433

During an NRC inspection completed September 11, 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 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on August 25, 1997, the licensee did not maintain control and constant surveillance of licensed material that was in an unrestricted area and not in storage. Specifically, a Troxler Model 3411B gauge being used at a temporary jobsite was left unattended and with the source rod still extended. The gauge contains a nominal 8.7 millicurie cesium-137 sealed source as well as a 40 millicurie americium-241 sealed source. (01013)

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

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 and the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report No. 030-31876/97-01 and the Licensee's letter to the NRC dated October 7, 1997. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it 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).

Because your response, if you submit one, 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).

Dated at Arlington, Texas,
this 17th day of November 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

December 5, 1997

EA 97-508

James DeSana, Director
Michigan Department of Transportation
State Transportation Building
425 Ottawa Street
Lansing, MI 48909

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report 030-04813/97001(DNMS))

Dear Mr. DeSana:

This refers to the NRC inspection conducted on October 7, 1997, at job sites located in Warren and Wayne, Michigan. The inspection included a review of two reported incidents involving damage to portable moisture/density gauges. During the inspection, apparent violations of NRC requirements were identified, as described in the NRC inspection report transmitted with our letter dated November 7, 1997. On November 21, 1997, a predecisional enforcement conference was held with Mr. C. T. Maki and others of your staff to discuss the violations, their causes, and your corrective actions.

Based on the information developed during the inspection and the information provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The most significant violation (Violation A in the enclosed Notice), involves the failure to control and maintain constant surveillance of gauges containing licensed material. In one case, the gauge operator placed a gauge in front of his vehicle, forgot it was there and proceeded to run it over causing damage. In another case, a gauge was damaged when it was run over by construction equipment while the operator was otherwise occupied and did not maintain constant surveillance over licensed material.

The root cause appears to be inattention to detail by the gauge operators due in part to insufficient oversight by experienced personnel. Incumbent upon each NRC licensee is the responsibility to provide the necessary oversight and control over activities for which they are authorized, especially when those activities include work at temporary jobsites. Furthermore, we are concerned that the Michigan Department of Transportation has experienced four damaged gauges while they were being used at temporary job sites since July 1997. In three of those cases, the operators responsible for the gauges ran over their own gauges, including the incident that occurred in Warren, Michigan, on September 25, 1997. The violation represents a significant regulatory concern because failure to adequately secure and control licensed material could result in a hazard to public health and safety. In addition, the NRC expects licensees to take comprehensive actions to preclude the possibility of repetitive

incidents that require implementation of emergency procedures. Violation A of the enclosed Notice is classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were both prompt and comprehensive. These actions included: discontinuing the use of co-ops as gauge operators until the training program has been reviewed and revised to assure that co-ops receive the oversight necessary to improve the safety of their operations; revision of the training program to include new hires as well as co-ops; increased oversight for first year gauge users; and institution of a formal management audit program.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action, that may subject you to increased inspection effort.

Violation B of the Notice, failure to perform program audits as required, is considered a Severity Level IV violation in accordance with the Enforcement Policy.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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.

Sincerely,

for A. Bill Beach
Regional Administrator

Docket No. 030-04813
License No. 21-03039-01

Enclosure: Notice of Violation

NOTICE OF VIOLATION

Michigan Department of Transportation
Lansing, Michigan

Docket No. 030-04813
License No. 21-03039-01
EA 97-508

During an NRC inspection conducted on October 7, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal licensed materials that are stored in an unrestricted area. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, an unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on September 25, 1997, and on October 2, 1997, the licensee did not secure from unauthorized removal or limit access to licensed material at temporary job sites in Wayne and Warren, Michigan, unrestricted areas, nor did the licensee control and maintain constant surveillance of this licensed material. Specifically, on September 25, 1997, a moisture density gauge containing 8 millicuries of cesium-137 and 40 millicuries of americium-241 was damaged when it was run over by the operator's vehicle. On October 2, 1997, a similar device was damaged when it was run over by construction equipment at a temporary job site. (01013)

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

- B. Condition 21.B. of License No. 21-03039-01 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in a letter dated October 21, 1994, and other referenced documents.

Item 10 of the October 21, 1994 letter states, in part, that once a year a report from the Radiation Safety Officer will be presented to management and all others responsible for compliance with the licensed activities. The report shall identify deficiencies found during the ongoing audit along with corrective actions taken. Recommended changes to correct any ongoing problems will be included in the report for management to implement as soon as possible.

Contrary to the above, between November 21, 1994 and October 6, 1997, annual program audit reports were not provided to management and all others responsible for compliance with the licensed activities. (01014)

This is a Severity Level IV (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, the Michigan Department of Transportation 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 III, 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 violation, 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. 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 Lisle, Illinois
this 5th day of December 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

December 31, 1997

EA No. 97-500

Terrance C. Lee, M.D., President and
Radiation Safety Officer
Mobile Dynamic Imaging, Inc.
16 South Van Brunt Street
Englewood, New Jersey 07631

Dear Dr. Lee:

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report 030-34190/97-002)

This refers to the NRC inspection conducted at your facility on October 16, 1997 to determine if licensed activities were conducted safely and in accordance with requirements. This was the first NRC inspection conducted under this license after it was issued by the NRC on October 23, 1997. As described in the NRC inspection report which was sent to you on November 14, 1997, five apparent violations of NRC requirements were identified during the inspection. On November 26, 1997, a predecisional enforcement conference was conducted with you to discuss the violations, their causes, and your corrective actions. A copy of the enforcement conference report was sent to you by separate correspondence on December 4, 1997.

Based on the information developed during the inspection, and the information provided during the conference, the NRC has determined that five violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation and the circumstances surrounding them are described in detail in the subject inspection report. The violations involve (1) your failure, as the Radiation Safety Officer, to establish and implement written policies and procedures to ensure that radiation safety activities were performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program, including the performance of checks of the dose calibrator; (2) failure to notify the NRC prior to commencement of licensed activities after the NRC issued your license on October 23, 1996; and (3) three violations involving the failures to perform dose calibrator accuracy tests, geometry dependence tests, and linearity tests, at installation and prior to dose administration.

In the letter transmitting the inspection report, the NRC also described an apparent violation involving licensed material being used for purposes not authorized by the license in that at least one individual was injected with technetium-99m for the purpose of performing QC tests on the dose calibrator rather than for clinical reasons. Based on your assertion at the conference that the individual, who was associated with your company, was injected with the material for clinical reasons, no violation will be issued on this matter. However, the NRC has concluded that your failure, as the Radiation Safety Officer, to establish and implement written policies and procedures for performing checks of the dose calibrator prior to those injections, constitutes a significant regulatory concern.

Since your license had only been recently issued at the time these violations occurred, and since you are the Radiation Safety Officer, you should have been particularly knowledgeable of, and sensitive to, these regulatory requirements, and you should have assured adherence to them. Your failure to do so represents a significant regulatory concern. This failure also indicates a breakdown in control of licensed activities that represents a significant lack of attention toward licensed responsibilities. Therefore, these violations have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These actions, which were described at the conference, included plans to not resume activities under the license until a consultant was retained, as confirmed in a Confirmatory Action letter sent to you on December 4, 1997. Previously, you had ceased all activities at the facility in January 1997, and you have not resumed activities.

Therefore, a civil penalty is not being assessed in this case. However, you should be aware that the NRC staff gave serious consideration to the use of enforcement discretion to impose a civil penalty, notwithstanding the credit given for your corrective actions. The violations in the attached Notice and the near-total lack of involvement in the program on the part of the Radiation Safety Officer, as evidenced at the enforcement conference, reflect particularly poor licensee performance. Therefore, the inspection frequency of your licensed program is being increased. The NRC expects and requires that your licensed program be conducted in accordance with NRC requirements; therefore, failure to do so in the future may result in more significant enforcement action, including the assessment of civil penalties and modification, suspension, or revocation of your NRC license.

You are required to respond to this letter and the enclosed Notice, and you should follow the instructions specified in the enclosed Notice when preparing your response. 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 and its enclosure, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Hubert J. Miller
Regional Administrator

Mobile Dynamic Imaging

Docket No. 030-34190
License No. 29-30322-01

Enclosure: Notice of Violation

cc w/encl:
State of New Jersey

ENCLOSURE

NOTICE OF VIOLATION

Mobile Dynamic Imaging
Englewood, New Jersey

Docket No. 030-34190
License No. 29-30322-01
EA 97-500

During an NRC inspection conducted on October 16, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violations are listed below:

- A. 10 CFR 35.21(a) states, in part, that the licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

Contrary to the above, between October 23, 1996 (when the NRC license was issued), and January 1997, the licensee did not, through the Radiation Safety Officer, ensure that radiation safety activities were performed in accordance with approved procedures and regulatory requirements in the daily operation of the byproduct material program. Specifically, the Radiation Safety Officer delegated his responsibilities to a former partner, without knowing what his responsibilities entailed. The Radiation Safety Officer also did not provide adequate oversight of the byproduct material program to ensure that his delegated responsibilities were completed in accordance with the Commission's regulations and license conditions, as evidenced by the Violations B-E set forth herein. (01013)

- B. Condition 11.A of License No. 29-30322-01 states, in part, that the licensee may not possess and use materials authorized by 10 CFR 35.200 until the U.S. Nuclear Regulatory Commission, Region I, has been notified in writing that activities authorized by the license will be initiated.

Contrary to the above, the licensee did not notify NRC Region I in writing that activities authorized by the license commenced. Specifically, on November 6, 1996, the licensee administered technetium-99m labeled Tetrofosmin to three individuals for a Cardiac Perfusion study, and did not notify the NRC that licensed activities were being initiated, prior to obtaining and using material. (01023)

- C. 10 CFR 35.50(b)(2) requires, in part, that a licensee test each dose calibrator for accuracy at installation.

Contrary to the above, the licensee did not test their dose calibrator for accuracy at installation. Specifically, on November 6, 1996 the licensee administered technetium-99m labeled Tetrofosmin to three individuals, and prior to that date, the licensee did not test their dose calibrator for accuracy. **(01033)**

- D. 10 CFR 35.50(b)(3) requires, in part, that a licensee test each dose calibrator for linearity at installation.

Contrary to the above, the licensee did not test its dose calibrator for linearity at installation. Specifically, on November 6, 1996, the licensee administered technetium-99m labeled Tetrofosmin to three individuals, and prior to that date, the licensee did not test their dose calibrator for linearity. **(01043)**

- E. 10 CFR 35.50(b)(4) requires, in part, that a licensee test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used.

Contrary to the above, the licensee did not test its dose calibrator for geometry dependence over the range of volumes and volume configurations for which it will be used at installation. Specifically, on November 6, 1996, the licensee administered technetium-99m labeled Tetrofosmin to three individuals, and prior to that date, the licensee did not test their dose calibrator for geometry dependence. **(01053)**

These violations are classified in the aggregate as a Severity Level III problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Mobile Dynamic Imaging 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 31st day of December 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

July 31, 1997

EA 97-263

Corrine Connelly, Operations Manager
Nuclear Imaging, Ltd.
109 South Petro Avenue
Sioux Falls, South Dakota 57107

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT 030-30273/97-01)

Dear Ms. Connelly:

This refers to the inspection conducted on April 15-16, 1997, at your Chamberlain, Oacaoma, and Sioux Falls, South Dakota facilities, and the subsequent in-office inspection activities. The inspection findings were discussed with you and members of your staff during a telephonic exit briefing conducted on May 30, 1997. The subject report, which was dated June 27, 1997, documented the inspection findings and identified one apparent violation which was being considered for escalated enforcement. The cover letter to the inspection report stated that before the NRC made an enforcement decision, we were providing you with an opportunity to either respond to the apparent violation in writing or request a predecisional enforcement conference. You did not request a predecisional enforcement conference and instead provided a response by letter dated July 11, 1997.

Based on the information developed during the inspection and the information that you provided in your July 11 response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it is described in detail in the subject inspection report. The violation involves the failure to secure or keep under constant surveillance and immediate control all byproduct material when in transit. Specifically, a technologist did not adequately secure a shipping package containing approximately 300 millicuries of technetium-99m in a vehicle compartment. As a result, the package fell from the vehicle during transit, was found by a member of the general public, and was retrieved within about 30 minutes.

Although the package survived the fall and there were no actual safety consequences, the potential safety consequence in this case is that, under slightly different circumstances, a member of the public could have become contaminated and/or received an unintended and unnecessary radiation exposure. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level III.

In accordance with the Enforcement Policy, a civil penalty in the base amount of \$2750 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last 2 years or last two inspections, the NRC

considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. As noted in the subject report, we noted that your actions to promptly and properly respond to the event were noteworthy. Your actions included immediately retrieving the material, conducting an investigation into the causes of the event, training all technologists on the event and on the requirements of 10 CFR 35.80, repairing the latch for the storage compartment on the vehicle, and requiring technologists to check all locks to ensure proper function.

Therefore, to encourage prompt comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action, that may subject you to increased inspection effort.

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 and the date when full compliance was achieved is already adequately addressed on the docket in the subject NRC Inspection Report and your July 11 letter. Therefore, you are not required to respond to this letter 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.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ellis W. Merschoff', written in a cursive style.

Ellis W. Merschoff
Regional Administrator

Docket No. 030-30273
License No. 40-26908-01

Enclosure: Notice of Violation

cc w/Enclosure:
Minnesota Radiation Control Program Director
South Dakota Radiation Control Program Director

NOTICE OF VIOLATION

Nuclear Imaging, Ltd.
Sioux Falls, South Dakota

Docket No. 030-30273
License No. 40-26908-01
EA 97-263

During an NRC inspection conducted on April 15 through May 30, 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 35.80(c) requires, in part, that a licensee secure or keep under constant surveillance and immediate control all byproduct material when in transit.

Contrary to the above, on October 4, 1995, the licensee failed to secure or keep under constant surveillance and immediate control all byproduct material when in transit. Specifically, a shipping package containing approximately 300 millicuries of technetium-99m was placed in a vehicle compartment for transport. The package was not locked or otherwise secured and this resulted in the package falling from the vehicle during transit.

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

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 and the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report No. 030-30273/97-01 and the Licensee's letter to the NRC dated July 11, 1997. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it 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).

Because your response, if you submit one, 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).

Dated at Arlington, Texas,
this 31st day of July 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 10, 1997

EA 97-285

Ms. Barbara B. Guibord, Esquire
Pneumo Abex (Abex Corporation)
c/o Zernik, Horton, Guibord, and McGovern
77 West Wacker Drive, 33rd Floor
Chicago, Illinois 60601

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 99990001/97-07)

Dear Ms. Guibord:

This refers to the NRC inspection conducted from May 12 through 23, 1997 to review the circumstances associated with an event which occurred in Union, New Jersey in May 1997. The event involved the removal of generally licensed "EXIT" signs containing curie quantities of tritium (a radioactive material regulated by the NRC) from property located at 1200 Commerce Avenue, in Union, New Jersey. You owned and occupied this property until you sold it to Selrite Milworks Corporation (Selrite) in 1987. The three "EXIT" signs were removed from the site by a teenager and friends during demolition of the building on the property, and were taken home by the teenager. One of the signs was broken which resulted in contamination of the teenager and his friends, as well as the home of the teenager.

As described in the NRC inspection report sent to you on June 18, 1997, an apparent violation of NRC requirements was identified during the inspection. The apparent violation involved your failure, when you sold the building to Selrite in 1987, to provide Selrite a copy of the NRC regulations applicable to the possession of these "EXIT" signs, as well as your failure to inform the NRC of the transfer. Subsequently, when Selrite sold the facility to Carco Construction Company (Carco) in February 1997, Selrite, apparently unaware that the signs contained NRC generally licensed material, did not provide Carco a copy of the NRC regulations applicable to the possession of these "EXIT" signs, and did not inform the NRC of the transfer. Afterwards, Carco, also apparently unaware that the signs contained NRC generally licensed material, did not remove the devices for proper disposal when the building at the site was being demolished.

On July 10, 1997, a Predecisional Enforcement Conference was conducted with you, as well as staff from Selrite and Carco, to discuss the violation, its causes, and corrective actions. Based on the information developed during the inspection, and the information provided during the conference, the NRC has determined that you violated NRC regulations. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding the violation are described in detail in the subject inspection report. The violation involves your transfer of these devices to Selrite in 1987 without providing Selrite a copy of 10 CFR Part 31, and without informing the NRC of the manufacturer's name and model number of the device transferred, the name and address of the transferee, and the name and/or position of the

individual who might constitute a point of contact between the NRC and the transferee. This violation represents a significant NRC concern because it ultimately contributed to the failure to appropriately dispose of the signs, and the resultant contamination of members of the public. Specifically, in May 1997, a teenager took the signs from that location to his home, and removed tubes from the signs, including the damaged one, while he was eating. This resulted in contamination of his home and an uptake of tritium by the teenager and other members of the public. Therefore, the violation is classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

During the enforcement conference, you committed to take responsibility for disposal of the signs, and also committed to perform an extensive review of documentation to determine if any other properties owned by Abex, either formerly or presently, might contain the same type of signs. Nevertheless, the failure to properly transfer generally licensed material according to the regulations in 10 CFR Part 31 normally would result in a civil penalty. However, in view of the fact that this violation occurred in 1987, which exceeds the statute of limitations period of five years for assessing civil penalties (28 USC 2462), a civil penalty is not being assessed.

In your response dated July 29, 1997, you specifically describe the results of your efforts to determine what occurred when you sold the Union, New Jersey property and whether any other Abex properties, both in the past, or current, might possess this type of "EXIT" sign. Based on the information contained in that response, you are not required to respond to this letter as per the provisions of 10 CFR 2.201 unless the description in your July 29, 1997 response 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 letter of July 29, 1997, will be placed in the NRC Public Document Room (PDR). Your cooperation with us is appreciated.

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 99990001
General License

Abex Corporation

3

Enclosures:

1. Notice of Violation
2. Letter to Selrite Milworks Corporation
3. Letter to Carco Corporation

cc w/encls:

State of New Jersey

State of Illinois

ENCLOSURE 1

NOTICE OF VIOLATION

**Abex Corporation
Chicago, Illinois**

**Docket No. 999-90001
General License
EA 97-285**

During an NRC inspection conducted between May 12, 1997 and May 23, 1997, at the location of a former Abex Corporation facility in Union, New Jersey, as well at a private residence in that city, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the violation is set forth below:

10 CFR 31.5(c)(9) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to the general license in 10 CFR 31.5(a) shall transfer the device to another general licensee only where the device remains in use at a particular location. In such cases, the transferor shall give the transferee a copy of 10 CFR Part 31, and, within 30 days of the transfer, report to the Director of the Office of Nuclear Materials Safety and Safeguards, US NRC, the manufacturer's name and model number of the device transferred, the name and address of the transferee, and the name and/or position of an individual who may constitute a point of contact between the NRC and the transferee.

Contrary to the above, in 1987, Abex Corporation (Abex), a general licensee, sold its facility at 1200 Commerce Avenue in Union, New Jersey, to Selrite Milworks Corporation (Selrite), and in so doing, transferred to Selrite three "EXIT" signs (containing between 10 and 25 curies of tritium gas), which are devices generally licensed by the NRC. However, although the signs remained in use at that location, Abex did not give Selrite a copy of 10 CFR Part 31, and, did not inform the NRC of the manufacturer's name and model number of the device transferred, the name and address of the transferee, and the name and/or position of an individual who would constitute a point of contact between the NRC and the transferee. **(01013)**

This violation is classified at Severity Level III. (Supplement VI).

The NRC has concluded that information regarding the reason for this violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is adequately addressed on the docket in a Letter from Abex Corporation dated July 29, 1997. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D. C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice.

**Dated at King of Prussia, Pennsylvania
this 10th day of September 1997**

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

July 29, 1997

EA 97-218

Crew Schmitt, President
Power Resources, Inc.
1560 Broadway, Suite 1470
Denver, Colorado 80202

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT 40-8857/97-01)

Dear Mr. Schmitt:

This refers to the July 22, 1997, predecisional enforcement conference that was held at the NRC's Region IV office in Arlington, Texas. The conference was held to discuss several apparent violations which were identified during a routine inspection conducted on March 10-13 at your Highland Uranium Project site in Converse County, Wyoming, and during the subsequent in-office inspection activities which followed. The results of the inspection were discussed with your staff during a telephonic exit briefing on June 17, 1997, and were documented in the subject inspection report on July 3, 1997.

Based on the information developed during the inspection and the information that you provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. The violations included: (1) a failure to adequately monitor occupational exposure to radon progeny; (2) the failure to post areas as airborne radioactivity areas; (3) the failure to establish any environmental monitoring procedures as required by the license; (4) the failure to report the results of two water samples to the NRC in the semiannual effluent reports for 1996; (5) the failure to provide the NRC with accurate and complete semiannual environmental and effluent monitoring reports; and (6) the failure to submit an annual update to your surety amount within the designated time frame as specified by License Condition 9.5.

The circumstances surrounding several of the violations indicate a lack of management oversight and attention to detail in both your radiation protection and environmental programs. This is of particular concern because your performance-based license delegated to you substantial regulatory authority and was issued to you with the expectation that you would conduct your activities with sufficient management oversight and effective internal audits to identify and correct potential NRC violations. Indications of a lack of management oversight included: (1) the fact that these violations were identified by NRC inspectors and should have been identified by PRI or its audit program; (2) the violation involving the failure to establish environmental monitoring procedures should have been prevented by your corrective actions for a previous similar violation identified during our inspection in May 1996 (refer to PRI's response to Violation A in the letter dated July 10, 1996); (3) numerous mistakes in semiannual effluent reports; and (4) a failure to comply with a requirement in the license related to updating the surety. Therefore, these violations

are classified in the aggregate in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$5,500 is considered for a Severity Level III problem. Because your facility has not been the subject of escalated enforcement actions within the last 2 years, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. In evaluating your overall corrective actions, we concluded that Power Resources, Inc. (PRI), is deserving of credit. Although there was some concern with your staff's delays in determining the worker doses from the high radon levels after NRC identified the issue, our decision was based on the significant management changes brought about by the purchase of PRI. Specifically, a new president/CEO had been named, and the board of directors had authorized new positions for a vice president of operations, a director of environment who would report to the new president/CEO, and environmental scientists. Further, additional internal audits were committed to be performed by the new parent corporation, Cameco.

Therefore, to encourage comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

During the conference, we also discussed one additional apparent violation involving the use of process or engineering controls to control the concentrations of radioactive material in air. However, at the conference you presented new information that showed engineering controls were used to the extent practical. This information is documented in your letter dated July 24, 1997. As a result of the new information, the NRC has determined that a violation did not exist, and this issue is not cited in the attached Notice.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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).

Sincerely,

Ellis W. Merschoff
Regional Administrator

Docket No. 040-8857
License No. SUA-1511

Enclosure: Notice of Violation

Power Resources Inc.

-3-

cc w/Enclosure: Wyoming Radiation Control Program Director

Mr. Paul R. Hildenbrand, Manager
Environmental and Regulatory Affairs
Power Resources, Inc.
800 Werner Court, Suite 230
Casper, Wyoming 82601

Mr. William F. Kearney
Environmental Superintendent
Power Resources, Inc.
P.O. Box 1210
Glenrock, Wyoming 82637

Mr. David Finley, Operations Chief
Solid and Hazardous Waste Division
Department of Environmental Quality
122 W. 25th Street
Cheyenne, Wyoming 82002

Land Quality Division
Wyoming Department of Environmental Quality
122 W. 25th Street
Cheyenne, Wyoming 82002

Mr. Pat Mackin, Assistant Director
Systems Engineering & Integration
Center for Nuclear Waste Regulatory Analyses
6220 Culebra Road
San Antonio, Texas 78238-5166

NOTICE OF VIOLATION

Power Resources, Inc.
Denver, Colorado

Docket No. 40-8857
License No. SUA-1511
EA 97-218

During an NRC inspection conducted on March 10 through June 17, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 20.1501 requires that each licensee make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in 10 CFR Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation levels, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present.

Pursuant to 10 CFR 20.1003, survey means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

Contrary to the above, the licensee did not make surveys to assure compliance with 10 CFR 20.1502, which states, in part, that each licensee shall monitor exposures to radioactive material at levels sufficient to demonstrate compliance with the occupational dose limits of 10 CFR Part 20. Specifically, the licensee did not monitor for occupational exposure to radioactive material on several occasions in the satellite buildings, even though air samples obtained between October 1996 and February 1997, indicated airborne radioactivity concentrations were in excess of the radon-222 progeny derived air concentration (DAC) specified in 10 CFR Part 20, Appendix B.

- B. 10 CFR 20.1902(d) requires that the licensee post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA." Airborne radioactivity area is defined as a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed materials exist in concentrations (1) in excess of the derived air concentrations specified in 10 CFR Part 20, Appendix B, or (2) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

Contrary to the above, during the period November 5-13, 1996, the Satellite 2 building was not posted with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA." During that interval airborne radon progeny existed in concentrations where individuals present without respiratory protective equipment could have or did exceed, during the hours the individuals were present in that week, an intake of 12 DAC-hours. Specifically, licensee estimates of exposures for individuals working in the Satellite 2 building for the

period of November 5-13, 1996, ranged from 12 to 152 DAC-hours. Additionally, radon progeny concentrations were measured by the licensee and found to be above the DAC on numerous occasions between October 1996 and February 1997.

- C. License Condition 9.8 states that written standard operating procedures shall be established for non-operational activities described in the Operations Plan and Reclamation Plan of the approved license application dated July 28, 1995, including in-plant and environmental monitoring, bioassay analysis, and instrument calibration.

Contrary to the above, at the time of the inspection the licensee had not established any written standard operating procedures for the environmental monitoring activities.

- D. 10 CFR 40.9 requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, the licensee did not provide to the Commission information that was complete and accurate in all material respects. Specifically, the two semi-annual environmental and effluent monitoring reports for 1996, submitted to the NRC on August 29, 1996, and February 26, 1997, were determined to contain an excessive amount of inaccurate information. For example, the lower limit of detection (LLD) values listed in the reports for radon-222 was not consistent with the LLD used and reported by the laboratory performing the sampling. Also, an environmental monitoring water sample for a pond that was frozen during the monitoring period was reported, although it was actually the sample result from a previous report. Additionally, an error was found in the licensee's determination of the annual dose to the members of the public that was enclosed as Table 12 to the semi-annual report for the second half of 1996.

- E. License Condition 12.2 states that the results of effluent and environmental monitoring shall be reported to the NRC in accordance with 10 CFR 40.65.

Contrary to the above, the licensee obtained two samples from Shallow Well No. 2 during 1996 as required by the license but failed to include these sample results in either of the two semi-annual effluent reports submitted to the NRC for 1996.

- F. License Condition No. 9.5 requires, in part, that annual updates to the surety amount be provided to the NRC at least three months prior to June 30 of each year. Along with each annual update, License Condition No. 9.5 also requires the submittal of supporting documentation showing a breakdown of the costs and the basis for the cost estimates with adjustments for inflation, maintenance of a minimum 15 percent contingency, changes in engineering plans, activities performed, and any other conditions affecting estimated costs for site closure.

Contrary to the above, the licensee failed to submit an annual update to the surety amount for 1997-1998 at least three months prior to June 30, 1997, and failed to submit any supporting documentation. Specifically, as of the July 1997, the NRC

has not received the annual update to the surety amount for 1997-1998, which was due by March 1997.

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

Pursuant to the provisions of 10 CFR 2.201, Power Resources, Inc., 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, 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 violation, 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.

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 29th day of July 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 5, 1997

EA 97-373

Mr. Tom Ali, Senior Vice President
Professional Services Industries, Inc.
510 East 22nd Street
Lombard, IL 60148

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report 030-33792/97001(DNMS))

Dear Mr. Ali:

This refers to the inspection conducted on July 17-18, 1997, with continuing NRC review through July 25, 1997, at the Professional Services Industries, Inc. (PSI) Pittsburgh, Pennsylvania facility, and at a temporary job site in East Palestine, Ohio. The purpose of the inspection was to determine whether activities authorized by your NRC license were conducted in accordance with NRC requirements. A report documenting our inspection findings was sent to Mr. A. Ackerman, Corporate Radiation Safety Officer, by letter dated August 7, 1997. Based on the number and nature of the violations identified during the inspection, a predecisional enforcement conference was held in the Region III office on September 4, 1997, to discuss the apparent violations, their causes, and the proposed corrective actions.

Based on the information developed during the inspection and the information that you provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. The violations involve: (1) failure to directly supervise an assistant radiographer performing radiographic operations within a fixed facility on the PSI premises; (2) unauthorized use of radioactive material on one occasion by a trainee; (3) failure to provide a film badge to the trainee during that use¹; (4) failure to record pocket dosimeter readings; (5) failure to notify NRC of a radiation safety officer change; (6) failure to perform sealed source inventories; (7) failure to perform inspection/maintenance of radiography equipment; and (8) failure to assure prompt processing of personnel monitoring devices.

These violations are attributed to the lack of sufficient knowledge and understanding of PSI's program requirements by the remaining licensee staff after the departure of the radiation safety officer. The replacement radiation safety officer was not provided with adequate direction and training to assure that he was prepared to manage the radiation safety program and operate it in compliance with NRC requirements. The NRC expects each of its licensees to establish and

¹The NRC acknowledges that the trainee was being supervised by a radiographer during this use, which involved establishing a radiation boundary, and that she did have a dosimeter and an alarm ratemeter.

maintain controls and procedures to ensure that radioactive material is handled properly and in accordance with NRC requirements regardless of personnel changes. In addition to compliance deficiencies, the apparent lack of adequate oversight at this facility resulted in a significant failure to ensure that the program was being conducted in a safe manner.

Safety significance involves the consideration of the actual safety consequence and the potential safety consequence. In this case, the resulting violations represent a potential safety consequence because it is possible that significant radiation exposures to workers could occur when individuals who have not received appropriate training handle up to 100 curies (3.7 TBq) of iridium-192. Therefore, violation A of the Notice is categorized as a Severity Level III and violations B.1 and B.2 of the Notice are classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation or problem. Because your facility has not been the subject of escalated enforcement actions within the last 2 years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective action is warranted because actions taken and/or planned, at the time of the enforcement conference, were both prompt and comprehensive. These actions included: (1) use of trainees has been suspended for the remainder of 1997; (2) corporate audits of the radiation safety program are performed bi-monthly; (3) retraining has been conducted for all facility personnel to explain the job functions for the different levels of certifications; (4) a memorandum has been transmitted company wide to individual managers confirming certification levels of the authorized technicians; and (5) all Pittsburgh personnel (including assistant radiographers) have been retrained as to their regulatory responsibilities during the performance of radiography.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized not to propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

Violations C through G addressed in the Notice have been categorized as Severity Level IV violations in accordance with the Enforcement Policy.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

T. Ali

-3-

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 (PDR).

Sincerely,

A. Bill Beach
Regional Administrator

Docket No. 030-33792
License No. 12-16941-03

Enclosure: Notice of Violation

NOTICE OF VIOLATION

Professional Service Industries, Inc.
Lombard, Illinois

Docket No. 030-33792
License No. 12-16941-03
EA 97-373

During an NRC inspection conducted on July 17-18, 1997, with continuing NRC review through July 25, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) the radiographer's personal presence at the site where sealed sources are being used; (b) the ability of the radiographer to give immediate assistance if required; and (c) the radiographer watching the assistant's performance of the above referred to operations.

Contrary to the above, on April 7, April 17, May 5, and May 9, 1997, an assistant radiographer operated radiographic exposure devices and conducted radiation surveys at the licensee's fixed facility in Pittsburgh, PA without the personal supervision of a radiographer. The radiographer was in the next building rather than at the cell where the radiographic operations were being conducted. (01013)

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

- B. Condition 19 of License No 12-16941-03 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures, including enclosures, contained in an application dated February 16, 1995 and in a letter dated July 7, 1995.

1. Item 11 of the letter dated July 7, 1995, states that trainees are not authorized to operate industrial radiographic exposure devices.

Contrary to the above, on June 23, 1997, a PSI trainee was permitted to operate an Amersham 660B industrial radiographic exposure device containing iridium-192 at Frostburg University. (02013)

2. Section 3.2 (a) of the PSI "Operating and Emergency Procedures" Part D, referenced in the application dated February 16, 1997, states that film badges must be worn by all personnel when assigned to radiographic operations.

Section 3.0 (a) of the PSI "Radiation Safety Training" Part B, referenced in the application dated February 16, 1995, states, in part, that the (trainee) will be

issued personnel monitoring equipment prior to any job assignment. Personnel monitoring equipment is defined in Section 3.0 of the PSI Operating and Emergency Procedures, as a film badge, direct reading pocket dosimeter, and an alarming rate meter.

Contrary to the above, on June 23, 1997, a PSI trainee was assigned to a radiographic operation at Frostburg University and did not wear a film badge. In addition, a film badge had not been issued to the trainee prior to the job assignment. (02023)

These violations represent a Severity Level III problem (Supplement VI).

- C. 10 CFR 34.33(b) requires that pocket dosimeters be read and exposures recorded daily, and that the licensee retain each record of these exposures for three years after the record is made.

Contrary to the above, between April 1, 1997 and July 18, 1997, on six occasions pocket dosimeter readings were not recorded. (01014)

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

- D. Condition 12.B. of License No. 12-16941-03 authorizes a certain named individual as the Radiation Safety Officer (RSO) for the Pittsburgh facility.

Contrary to the above, from June 16, 1997 through July 18, 1997, an individual not named on or authorized by the license was acting as RSO. The individual named as RSO on the license was no longer employed by PSI. (02014)

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

- E. 10 CFR 34.26 requires, in part, that the licensee conduct a quarterly inventory to account for all sealed sources.

Contrary to the above, as of July 18, 1997, an inventory to account for all sealed sources had not been performed since March 1997, an interval exceeding one quarter. (03014)

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

- F. 10 CFR 34.28(b) requires, in part, that the licensee conduct a program for inspection and maintenance of radiographic exposure devices, storage containers, and source changers, at intervals not to exceed three months.

Contrary to the above, as of July 18, 1997, the licensee had not conducted a program for inspection and maintenance of radiography devices or source changers since March 1997, an interval exceeding three months. (04014)

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

- G. License Condition 19.A of NRC License No. 12-16941-03 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the licensee's application dated February 16, 1995.

Section 16.2 of the PSI "Radiation Safety Program" Part A, referenced in the application dated February 16, 1995, states that the RSO will return all film badges to the supplier promptly after each month usage with the appropriate control badge.

Contrary to the above, as of July 18, 1997, the April and May 1997 film badges had not been returned to the supplier for processing. (05014)

This is a Severity Level IV violation (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Professional Service Industries, Inc. (Licensee) 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 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 violation 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. 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, response to the Severity Level III violation/problem shall be submitted under oath or affirmation.

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 Lisle, Illinois
this 5th day of November 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

December 31, 1997

EA No. 97-540

Terrance C. Lee, M.D.
Radiation Safety Officer
Servicing Imaging Systems International
The Cardiology Group
111 Northfield Avenue, Suite 301
West Orange, New Jersey 07052

Dear Dr. Lee:

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report 030-33828/97-001)

This refers to the NRC inspection conducted at your facility on November 5, 1997 to determine if licensed activities were conducted safely and in accordance with requirements. As described in the NRC inspection report which was sent to you on November 14, 1997, apparent violations of NRC requirements were identified during the inspection. On November 26, 1997, a predecisional enforcement conference was conducted with you to discuss the violations, their causes, and your corrective actions. A copy of the enforcement conference report was sent to you by separate correspondence on December 4, 1997.

Based on the information developed during the inspection, and the information provided during the conference, the NRC has determined that eight violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation and the circumstances surrounding them are described in detail in the subject inspection report. The violations involve (1) failure to perform daily surveys in areas where radiopharmaceuticals are routinely prepared for use or administered; (2) failure to perform a linearity check of the dose calibrator for the 3rd quarter of 1997; (3) failure to conspicuously note on the survey instrument the apparent exposure rate from a dedicated check source at the time of calibration; (4) failure to check the survey instrument for proper operation with the dedicated check source each day of use; (5) failure to provide a personnel finger monitor to an individual who handles radioactive material on a regular basis; (6) failure to perform leak tests of sealed sources; (7) failure to perform inventories of sealed sources; and (8) failure to perform an annual review of the radiation protection program.

The violations indicate that neither you, as the Radiation Safety Officer, nor others associated with the facility, provided appropriate attention to the radiation safety program to ensure that activities were conducted safely and in accordance with requirements, since fundamental aspects of the program were not implemented, as evidenced by the violations. The violations indicate a breakdown in control of licensed activities that represents a significant lack of attention toward licensed responsibilities. Therefore, these violations have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These actions, which were described at the conference, included plans to retain a consultant to assist with assessment and implementation of the radiation safety program, as confirmed in a Confirmatory Action letter sent to you on December 4, 1997. Further, you developed a list to assist with the timely completion of required tests and checks.

Therefore, a civil penalty is not being assessed in this case. However, you should be aware that the NRC staff gave serious consideration to the use of enforcement discretion to impose a civil penalty, notwithstanding the credit given for your corrective actions. The violations in the attached Notice and the near-total lack of involvement in the program on the part of the Radiation Safety Officer, as evidenced at the enforcement conference, reflect particularly poor licensee performance. Therefore, the inspection frequency of your licensed program is being increased. The NRC expects and requires that your licensed program be conducted in accordance with NRC requirements; therefore, failure to do so in the future may result in more significant enforcement action, including the assessment of civil penalties and modification, suspension, or revocation of your NRC license.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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 and its enclosure, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 030-33828
License No. 29-30214-01

Enclosure: Notice of Violation

cc w/encl:

Dr. Aharon Ben-Haim, Servicing Imaging Systems International
State of New Jersey

ENCLOSURE

NOTICE OF VIOLATION

Servicing Imaging Systems International
West Orange, New Jersey

Docket No. 030-33828
License No. 29-30214-01
EA 97-540

During an NRC inspection conducted on November 5, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violations are listed below:

- A. 10 CFR 35.21 (a) states, in part, that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures. The licensee's procedures for external personnel monitoring are described in the application dated March 20, 1995, and were originally approved by License Condition No. 16 (Condition No. 15 of Amendment No. 02).

The application dated March 20, 1995, states in Item No. 9.4 that the licensee would establish and implement the model personnel external monitoring program published in Appendix D to Regulatory Guide 10.8, Revision 2. Appendix D states, in part, that all individuals who, on a regular basis, handle radioactive material that emits ionizing photons will be issued a film or TLD finger monitor.

Contrary to the above, as of November 5, 1997, film or TLD finger rings were not provided to all individuals who, on a regular basis, handle radioactive material. Specifically, a film or TLD finger ring was not issued to a Nuclear Medicine Technologist who handled radioactive material on a regular basis. (01013)

- B. 10 CFR 35.51 (a)(3) states, in part, that the licensee shall conspicuously note on survey instruments the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

Contrary to the above, as of November 5, 1997, the licensee had not conspicuously noted the apparent exposure rate from a dedicated check source on their Ludlum Model 3 survey instrument. (01023)

- C. 10 CFR 35.51 (c) states, in part, that a licensee shall check each survey instrument for proper operation with a dedicated check source each day of use.

Contrary to the above, as of November 5, 1997, the licensee did not check their survey instrument for proper operation with the dedicated check source each day of use. (01033)

- D. 10 CFR 35.50(b)(3) states, in part, that a licensee shall test each dose calibrator for linearity upon installation and at least quarterly thereafter.

Contrary to the above, the licensee did not test their dose calibrator for linearity at least quarterly. Specifically, the licensee did not perform a linearity test on their dose calibrator during the third calendar quarter of 1997. (01043)

- E. 10 CFR 35.70(a) states, that a licensee survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

Contrary to the above, between February 1, 1997, and July 12, 1997, the licensee did not survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceutical are routinely prepared for use or administered. Specifically, daily surveys were not performed on February 1, 8 and 22, March 15 and 22, April 12 and 26, May 14 and 21, June 7, and July 12, 1997; days when radiopharmaceuticals were utilized at the facility. (01053)

- F. 10 CFR 35.59(b)(2) states, in part, that a licensee in possession of a sealed source shall test the source for leakage at intervals not to exceed six months or at other intervals approved by the Commission or an Agreement State.

Contrary to the above, the licensee did not test a sealed source for leakage at intervals not to exceed six months or at other intervals approved by the Commission or an Agreement State. Specifically, as of November 5, 1997, the licensee had not leak tested a sealed source containing 238 microcuries of cesium-137 since May 5, 1996, an interval exceeding six months. (01063)

- G. 10 CFR 35.59(g) states, in part, that a licensee in possession of a sealed source shall conduct a quarterly physical inventory of all such sources in its possession.

Contrary to the above, the licensee did not conduct quarterly physical inventories of sealed sources. Specifically, as of November 5, 1997, the licensee had not performed an inventory of a sealed source containing 238 microcuries of cesium-137 since May 5, 1996, an interval exceeding several calendar quarters. (01073)

- H. 10 CFR 20.1101(c) states, in part, that the licensee periodically (at least annually) review the radiation program content and implementation.

Contrary to the above, as of November 5, 1997, the licensee had not previously reviewed the radiation program content and implementation. (01083)

These violations are classified in the aggregate as a Severity level III problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Servicing Imaging Systems International 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 31st day of December 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 25, 1997

EA 97-406

Mr. John Grangeia, Vice President
Professional Services
St. Peter's Medical Center
254 Easton Avenue
New Brunswick, New Jersey 08903-0591

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-02502/97-001)

Dear Mr. Grangeia:

This refers to the NRC inspection conducted on August 14, 1997, at your facility. The inspection was conducted to review the activities authorized by your license, and to determine if they were conducted safely and in accordance with NRC requirements. During the inspection, four apparent violations of NRC requirements were identified, as described in the NRC inspection report transmitted with our letter, dated September 4, 1997. On September 18, 1997, a predecisional enforcement conference was conducted with you, and other St. Peter's Medical Center staff, to discuss the violations, their causes, and your corrective actions. A copy of the enforcement conference report will be sent to you by separate correspondence.

Based on the information developed during the inspection and enforcement conference, the NRC has determined that four violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice). Two of the violations involve (1) failure to maintain control of licensed material, specifically, a cesium-137 source which was inadvertently taken by a contract physicist to another hospital in New Jersey; and (2) failure to immediately report to the NRC Operations Center that the radioactive source was lost, transported through unrestricted areas, and discovered at another hospital. The violations are described in detail in the Notice and the subject inspection report.

The actual incident occurred in November 1995 when the contract physicist came to your facility and used his portable dose calibrator to measure the activity of your 38 cesium-137 brachytherapy sources. The last source that was calibrated was inadvertently left in the portable dose calibrator and was transported by the contract physicist to St. Francis Hospital, in Trenton, New Jersey. The source was not discovered until the next morning when the contract physicist started to set-up his measuring system to calibrate sources at St. Francis Hospital. After you became aware that this event occurred, you failed to report this matter to the NRC as required. Two other violations of NRC requirements contributed to this event, namely (1) failure to inventory sources after the sources were returned to the shielded storage location (such an inventory would have indicated that one of the sources was missing); and (2) failure to make adequate surveys to evaluate the presence of potential radiological hazards during and after your source calibration procedures.

The actual radiological consequences of this incident appear to be minimal, because the source was recovered within 24 hours, was transported by a contract physicist in his private car, was stored in a radiologically restricted area after arrival at St. Francis Hospital. Moreover, persons in unrestricted areas were exposed to radiation emanating from the source for only short periods of time. However, this failure to maintain control of licensed material could have had more significant radiological consequences since the portable measuring equipment containing the source was not properly shielded and the dose rate near the equipment case was approximately 50 mR/hr.

The violations demonstrate a significant lack of oversight and attention to licensed activities that collectively represent a breakdown in control of these activities. As such, the violations have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy in effect at the time this violation occurred, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III problem that occurred in November 1995. Because your facility has not been the subject of an escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were both prompt and comprehensive. These actions, which were described during the enforcement conference, and/or during the inspection, included, but were not limited to a review of policies and procedures related to handling brachytherapy sources, source inventories and radiological surveys, by your Radiation Safety Officer with your physics staff, immediately following the incident and annually, thereafter. Also, with respect to the failure to report this incident to the NRC within 30 days of discovery, as required, you indicated, during the enforcement conference, that based on your current understanding of NRC expectations in this area, all similar incidents will be reported to the NRC. Also, you indicated that if there is any doubt about whether an incident is reportable, you will immediately contact the NRC for clarification.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

St. Peter's Medical Center

3

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,

Hubert J. Miller
Regional Administrator

Docket No. 030-02502
License No. 29-07566-01

Enclosure: Notice of Violation

cc w/encl:
State of New Jersey

ENCLOSURE

NOTICE OF VIOLATION

St. Peter's Medical Center
New Brunswick, New Jersey

Docket No. 030-02502
License No. 29-07566-01
EA 97-406

During an NRC inspection conducted on August 14, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violations are listed below:

- A. 10 CFR 20.1802, in part, requires that the licensee control and maintain constant surveillance of licensed material that is not in storage.

Contrary to the above, on November 9, 1995, the licensee did not control and maintain constant surveillance of a 14.7 millicurie cesium-137 source. That source, which was not in storage, was located in the portable dose calibrator of the licensee's contract physicist, and was inadvertently taken from the licensee's facility and transported to St. Francis Hospital in Trenton, New Jersey.

- B. Condition 22 of License No. 29-07566-01 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in the licensee's application dated October 11, 1993.

Item 10.15(14) of the application dated October 11, 1993, titled Sealed Source Management states, in part, that "The sealed sources for brachytherapy are stored in a leaded safe in a secured room in Radiation Therapy. An inventory is maintained for these sealed sources. The inventory is updated any time a source(s) is removed from or returned to the safe."

Contrary to the above, on November 9, 1995, a cesium-137 source was removed from safe for source calibrations performed by the contract physicist, and the inventory was not updated.

- C. 10 CFR 20.1501, in part, requires, that each licensee make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation levels, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present.

Pursuant to 10 CFR 20.1003, survey means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

Contrary to the above, on November 9, 1995, the licensee did not make surveys to assure compliance with 10 CFR 20.1301(A)(2), which limits radiation dose in any unrestricted area to 0.002 rem in any one hour. Specifically, the licensee did not make surveys of the contract physicist's portable dose calibrator, and as a result, the licensee did not determine that a cesium-137 source was inadvertently left in the calibrator. The dose in unrestricted areas from the unshielded source was estimated to be 0.005 rem per hour.

- D. 10 CFR 20.2201(a)(1)(i) requires the licensee to report to the NRC Operations Center by telephone immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in an aggregate quantity greater than 1000 times the quantity specified in appendix C to part 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas.

Contrary to the above, on November 10, 1995, the licensee did not report to the NRC Operations Center by telephone, after it became known to the licensee that one of its cesium-137 sources was in an unplanned location and that exposure could have resulted to persons in unrestricted areas as the unshielded source was carried through the hallways, stairwells, elevators and the parking lots of the 2 hospitals. The Appendix C quantity for cesium-137 is 10 microcuries. The cesium-137 source was 14.7 millicuries, 1470 times greater than the Appendix C quantity.

These violations are categorized in the aggregate as a Severity Level III problem (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, St. Peter's Medical Center 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 25th day of September 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 25, 1997

EA 97-358

Ms. Jackie Werts
Assistant Executive Director
Soldiers and Sailors Memorial Hospital
32-36 Central Avenue
Wellsboro, Pennsylvania 16901

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-11497/97-001)

Dear Ms. Werts:

This refers to the NRC inspection conducted on July 7, 1997, at the above address in Wellsboro, Pennsylvania, the findings of which were discussed with you during an exit meeting on July 7, 1997. During the inspection, one violation of NRC requirements was identified, as described in the NRC inspection report transmitted with our letter dated August 19, 1997. In the August 19, 1997 letter, the NRC provided you an opportunity to either respond in writing to the apparent violation addressed in the inspection report or request a predecisional enforcement conference. You responded to the apparent violation in letters to the NRC dated September 3, 1997, and September 11, 1997.

Based on the information developed during the inspection and the information you provided in your September 3 and September 11, 1997 responses, the NRC has determined that one violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involves failure to secure licensed materials in your Nuclear Materials prep room/hot lab, an unrestricted area. In your September 3 and September 11, 1997 letters, you indicated that the nuclear medicine technologist left the hot lab door closed, but unlocked while working in the adjacent stress area because she was frequently transferring radioactive material between the two areas, and she was concerned that reaching for a key and setting radioactive material down could spread contamination while she was transferring material.

The violation represents a significant regulatory concern because the failure to maintain appropriate security of the material could result in it being lost or stolen, and also has the potential to cause exposure to members of your staff, as well as members of the public. Therefore, the violation is classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The violation demonstrates the importance of adequate oversight of management in general, and your radiation safety staff in particular to ensure this requirement is met.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These actions, which were described in your September 3, and September 11, 1997 responses included: (1) adding a keypad combination lock with a self-closing, self-locking door to the hot lab to ensure locking of the door, while at the same time not requiring the technologist to reach for the key; and (2) instituting a policy that the door be locked and never blocked unless authorized personnel are physically present.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

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 and the date when full compliance was achieved is already adequately addressed on the docket in your letters dated September 3 and September 11, 1997. Therefore, you are not required to respond to this letter 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,

Hubert J. Miller
Regional Administrator

Docket No. 030-11497
License No. 37-16602-01

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Pennsylvania

ENCLOSURE

NOTICE OF VIOLATION

Soldiers and Sailors Memorial Hospital
Wellsboro, Pennsylvania

Docket No. 030-11497
License No. 37-16602-01
EA No. 97-358

During an NRC inspection conducted on July 7, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violation is listed below:

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, for approximately 10 minutes on July 7, 1997, the licensee did not secure from unauthorized removal or limit access to licensed material (including a vial containing 200 millicuries of bulk technetium-99m, as well as several unit doses of technetium-99m) located in the Nuclear Medicine prep room/hot lab, which was an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. (01013)

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

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 and the date when full compliance achieved is already adequately addressed on the docket in the letters from the Licensee dated September 3 and 11, 1997. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Dated at King of Prussia, Pennsylvania
this 25th day of September 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

October 28, 1997

EA 97-480

R. J. Schukai
Vice President, Power Plants
Union Electric Company
1901 Chouteau Avenue
St. Louis, MO 63166

SUBJECT: NOTICE OF VIOLATION AND NRC INSPECTION REPORT 030-
332690/97001(DNMS)

Dear Mr. Schukai:

This refers to the inspection conducted on September 22, 1997, with continuing review through October 1, 1997, at the Sioux Plant in West Alton, Missouri, and the Rush Island Plant in Festus, Missouri. The purpose of the inspection was to determine whether activities authorized by the license were conducted safely and in accordance with NRC requirements. The inspection included a review of a 1996 event when contract workers removed a fixed gauge containing a 200 millicuries (mCi) (7.41 gigabecquerel) of cesium-137 during a production line demolition project. The enclosed report contains the NRC inspection findings and describes the event and associated violations in detail. On October 9, 1997, members of my staff contacted Mr. N. Slaten, Radiation Safety Officer, by telephone to discuss the violations associated with the event which are being considered for escalated enforcement action. During the telephone conversation Mr. Slaten agreed with the inspection findings and indicated that a predecisional enforcement conference was not desired.

Based on the information developed during the inspection, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations include (1) removal of licensed material by unauthorized individuals and (2) failure to secure licensed material from unauthorized removal.

The violations did not result in a loss of material or in any known exposures to employees, contract workers or members of the public. However, the NRC considers failures to maintain control and security over licensed material to be of significant regulatory concern because these requirements are designed to protect your employees and members of the public from unintended radiation exposures. Therefore, these violations are classified in the aggregate in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,000 is considered for a Severity Level III problem. Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether

credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. We have determined that the actions following the event were adequate and, therefore, corrective action credit is warranted. These actions included that prior to any future demolition activities, construction crews will be instructed during pre-job briefings not to remove gauges from their mountings and instructed to contact the compliance engineer if a gauge is observed mounted on plant equipment scheduled for repair or demolition.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III problem constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence and the date when full compliance was achieved is already adequately addressed in the enclosed Inspection Report 030-32690/97001(DNMS) and during our October 9, 1997, telephone conversation with Mr. Slaten. Therefore, you are not required to respond to this letter 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 enclosures, and your response, if you choose to send one, will be placed in the NRC Public Document Room.

Sincerely,

A Bill Beach
Regional Administrator

Docket No. 030-32690
License No. 24-02020-08

Enclosures: 1. Inspection Report 030-332690/97001
2. Notice of Violation

R. J. Schukai

-3-

cc w/enclosures:

Mr. N. Slaten
Radiation Safety Officer
Union Electric Company
1901 Chouteau Ave.
St. Louis, MO 63166

Mr. D. Redington
Plant Manager, Sioux Plant
Union Electric Company
8501 N. State, Route 94
West Alton, MO 63166

Mr. A. Neuhalfen
Plant Manager
Rush Island Plant
Union Electric Company
100 Big Hollow Road
Festus, MO 63028

NOTICE OF VIOLATION

Union Electric Company
West Alton, MO

Docket No. 030-32690
License No. 24-02020-08
EA 97-480

During an NRC inspection conducted on September 22, 1997, with continuing review through October 1, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that it not in storage. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on April 10, 1996, the licensee did not secure from unauthorized removal or limit access to a gauge containing 200 mCi (7.4 GBq) of cesium-127 located underneath a construction trailer outside of the licensee's building located at 8501 N. State, West Alton, MO, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material.

- B. Condition 15 of License No. 24-02020-08 requires that installation, relocation, maintenance, initial radiation survey, removal from service, and repair of devices containing byproduct material be performed only by persons specifically authorized by the Commission to perform such services.

Contrary to the above, on April 10, 1996, a gauge containing 200 mCi (7.4 GBq) of cesium-137 was removed from service by individuals not authorized by the Commission to perform such services.

These violations represent a Severity Level III problem (Supplements IV & VI).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence and the date when full compliance was or will be achieved is already adequately addressed in Inspection Report 030-32690 (DNMS) and during an October 9, 1997, telephone conversation with Mr. Slaten. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the US Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, Illinois 60532, within 30 days of the date of the letter transmitting this Notice.

If you choose to provide a response, it will be placed in the NRC Public Document Room, and 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.

Dated at Lisle, Illinois
this 28th day of October 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV

511 RYAN PLAZA DRIVE SUITE 400
ARLINGTON TEXAS 76011 8064

December 22, 1997

EA 97-509

James W. Abbott, President
University of South Dakota
School of Medicine
414 East Clark Street
Vermillion, South Dakota 57069-2390

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-15186/97-01)

Dear Mr. Abbott :

This refers to the predecisional enforcement conference conducted on December 15, 1997, in the NRC's Arlington, Texas office. The conference was conducted to discuss several apparent violations of NRC requirements identified during an NRC inspection completed November 7, 1997. An inspection report describing the apparent violations was issued on November 24, 1997.

Based on the information developed during the inspection, our consideration of information your representatives provided during the conference, as well as our consideration of your response to the inspection report provided in a December 10, 1997 letter, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them were described in detail in the inspection report. Please note that the violations being cited differ from the apparent violations in the following respect: We are not citing the apparent violation of 10 CFR 20.1101(d), involving the need to estimate exposures to members of the public from airborne emissions. This apparent violation is not being cited based on the non-volatile type and form of radioactive materials that were used in vented hoods.

The remaining violations include failures to: 1) secure radioactive materials against unauthorized removal; 2) conduct quarterly radiation safety program reviews with the university president; 3) assure, through the appointed radiation safety officer (RSO), that activities were being conducted in accordance with all requirements; 4) hold radioactive waste for 10 half-lives prior to disposal; 5) use only radiation survey instruments calibrated at six-month intervals; 6) conduct physical inventories of radioactive sources at six-month intervals; 7) assure that all purchases of radioactive materials were approved in advance by the RSO; 8) provide annual radiation exposure reports to workers; and 9) provide radiation safety training to housekeeping and security personnel.

While none of these violations appears to have resulted in actual radiation safety consequences, they are indicative of a breakdown in the radiation safety program which, if not corrected, has the potential to cause radiation safety incidents. For example, the failure to conduct inventories of radioactive sources has in other cases resulted in sources being lost or disposed of

improperly. Therefore, these violations have been categorized collectively at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a civil penalty with a base value of \$2,750 is considered for a Severity Level III problem. Because your facility has not been the subject of escalated enforcement actions within the last two NRC inspections, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. In your December 10, 1997, letter and at the conference, corrective actions were described which addressed not only the individual violations, but the university's efforts to assure continued compliance with NRC requirements through a renewed commitment to the radiation safety program. While the NRC finds the actions you have taken to date adequate, and therefore deserving of corrective action credit, we recommend that you revisit your commitment of resources during your quarterly meetings with the RSO to assure that it is sufficient to maintain compliance.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, not to propose a civil penalty in this case. However, similar violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III problem constitutes escalated enforcement action which may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In addition to describing actions to correct the individual violations, you should document those actions that you are taking to assure continued oversight of the radiation safety program and to avoid further neglect as was evidenced by our inspection findings. 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 enclosures, and your response will be placed in the NRC Public Document Room (PDR).

Sincerely,

Ellis W. Merschoff
Regional Administrator

Docket No. 030-15186
License No. 40-02331-19

Enclosure: Notice of Violation

cc w/Enclosure: State of South Dakota

NOTICE OF VIOLATION

University of South Dakota
Vermillion, South Dakota

Docket No. 030-15186
License No. 40-02331-19
EA 97-509

During an NRC inspection completed November 7, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on October 9, 1997, the licensee failed to secure from unauthorized removal, or limit access to, millicurie quantities of radioactive material located in the Lee Medicine Building, Room 61, and biochemistry department research laboratories in Rooms Nos. 58 and 139, which are controlled areas, nor did the licensee control and maintain constant surveillance of licensed material in these controlled areas. (01013)

- B. License Condition 24 requires, in part, that the licensee conduct its program in accordance with statements, representations, and procedures contained in the license application dated March 30, 1990, and letter dated June 1, 1993. Item 7, *Management Control and Responsibilities*, of the letter dated June 1, 1993, specifies that the RSO will meet quarterly with the president to review the audit of the procurement, use, and disposal of byproduct radioactive materials, the training programs of users, and the radiation safety program in place.

Contrary to the above, in calendar years 1994 through 1996, and up to October 9, 1997, the radiation safety officer had not met quarterly with the University of South Dakota's president to review the radiation safety program. (01023)

- C. 10 CFR 33.14(b) requires that the licensee, through the RSO, ensure that radiation safety activities are being performed in accordance with Commission regulations, license conditions, and the licensee's radiation safety procedures.

Contrary to the above, as of October 9, 1997, the licensee did not ensure, through the RSO, that radiation safety activities were being performed in accordance with Commission regulations, license conditions, and the licensee's radiation safety procedures. The inspection identified several violations of NRC requirements, including a repeat violation from a previous inspection involving calibration of survey instruments. (01033)

- D. License Condition 19 specifies, in part, that the licensee is authorized to hold radioactive material with a physical half-life of less than 65 days for decay-in storage before disposal in ordinary trash provided: (1) radioactive waste to be disposed of in this manner is held for decay a minimum of 10 half-lives; and (2) before disposal as ordinary trash, byproduct material is surveyed at the container surface with the appropriate meter set on its most sensitive scale and with no interposed shielding to determine that any radioactivity present cannot be distinguished from background.

Contrary to the above, as of October 9, 1997, the licensee had routinely disposed of radioactive material in ordinary trash without holding this material for decay for a minimum of 10 half-lives. (01043)

- E. License Condition 24 requires, in part, that licensed material be used in accordance with statements, representations, and procedures contained in the application dated March 30, 1990, and letter dated June 1, 1993. Item B of the letter dated June 1, 1993, specifies that the licensee will have available for use survey instruments calibrated within a 6-month period.

Contrary to the above, on October 9, 1997, during a tour of the research laboratories in the Lee Medicine Building, the inspector observed three survey instruments in three different laboratories which were being used to conduct daily radiation area surveys and personnel contamination checks, and the survey instruments being used had not been calibrated within the past 6 months. (01053)

- F. License Condition 16 requires that the licensee conduct a physical inventory each 6 months to account for all sources and/devices received and possessed under the license.

Contrary to the above, in calendar years 1994 through 1996 and up to October 9, 1997, the licensee had not conducted a physical inventory of two sealed sources each 6 months. Specifically, the licensee had not conducted physical inventories of a 900-microcurie cobalt-60 sealed source (Serial No. 1273), and two 16 gram plutonium-239 sealed sources (Serial Nos. 160A33 and 160A48). (01063)

- G. License Condition 24 requires, in part, that licensed material be used in accordance with statements, representation, and procedures contained in the application dated March 30, 1990, and letter dated June 1, 1993. Item 10 of the application specifies that all orders for licensed material must be authorized by the RSO, and phone orders by authorized users without the RSO's authorization is prohibited.

Contrary to the above, as of October 9, 1997, phone orders for licensed material had been routinely made by authorized users prior to receiving the RSO's authorization and signature on a requisition. (01073)

- H. 10 CFR 19.13 (b) requires that each licensee advise each worker annually of the worker's dose as shown in records maintained by the licensee pursuant to 20.2106 of Part 20.

Contrary to the above, for calendar years 1994 through 1996, the licensee had not advised each worker annually of their radiation dose as shown in records maintained by the licensee pursuant to 20.2106 of Part 20. (01083)

- I. License Condition 24 requires, in part, that licensed material be used in accordance with statements, representation, and procedures contained in the application dated March 30, 1990, and letter dated June 1, 1993. Item 10, "Radiation Safety," Section 10.2.5 "Other Procedures," Subsection (a) "Training and Supervision of Laboratory Personnel," of the application specifies that all housekeeping and security personnel are to be trained in radiation safety.

Contrary to the above, as of October 9, 1997, the licensee had not provided radiation safety training for housekeeping and security personnel. (01093)

These violations represent a Severity Level III problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, the University of South Dakota 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 violations, (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.

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 22nd day of December 1997

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

September 22, 1997

EA 97-267

U.S. Enrichment Corporation
ATTN: Mr. J. H. Miller
Vice President, Production
Two Democracy Center
6903 Rockledge Drive
Bethesda, MD 20817

**SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 70-7001/97005(DFS))**

Dear Mr. Miller:

This refers to the security inspection conducted on May 5-9, 1997, at the Paducah Gaseous Diffusion Plant in Paducah, Kentucky. The purpose of the inspection was to review the implementation of the approved Security Plan for the Protection of Classified Matter (Security Plan). A telephonic briefing was held on June 9, 1997, at which the results of the inspection were discussed. The inspection report detailing our findings was issued on June 24, 1997. A predecisional enforcement conference was held with you and members of your staff on July 16, 1997, to discuss the apparent violations, their root causes, and your corrective action.

Based on the information developed during the inspection, the information that you provided during the conference, and the information that you provided in your July 18 and August 11, 1997 letters, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. Specifically, these violations involved USEC's failure to: (1) provide the Commission complete and accurate information, and (2) implement various aspects of the Security Plan of the Paducah Gaseous Diffusion Plant.

The NRC is concerned with USEC's failure to provide complete and accurate information because the NRC relies on information received from certificate holders to make regulatory decisions involving the public health and safety. In addition, the NRC is concerned about the significant number of instances where USEC failed to implement its Security Plan. The NRC recognizes that the actual security consequences were minimal in this case. However, the violations described in the enclosed Notice are of significant regulatory concern because, collectively, they are indicative of a programmatic breakdown of the USEC Security Program.

This programmatic breakdown is evidenced by: (1) the fact that plant personnel were not familiar with commitments contained in the Security Plan; (2) the fact that USEC did not implement a significant number of specific Security Plan requirements involving a broad range of issues; and (3) the fact that USEC did not provide complete and accurate information to the Commission regarding certain aspects of its Security Plan. During the July 16, 1997 conference, you stated that the root cause of these violations was a lack of effective management oversight and a lack of self-assessments. Therefore, these violations have been characterized in the aggregate in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$55,000 is considered for a Severity Level III problem. Because your facility has not been the subject of escalated enforcement actions since its certification, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. In this case, the NRC has determined that credit is warranted for your prompt and comprehensive corrective action. Specifically, your corrective action which you discussed during the July 16, 1997, conference included: (1) reinforcing management's expectations for total procedural adherence, rigorous attention to detail, and complete regulatory compliance; (2) assembling a team of subject matter experts to concurrently review the three security plans (i.e., classified matter, physical, and transportation) for accuracy, consistency, and completeness; (3) taking immediate actions to bring the plant into compliance with the Security Plan; (4) proceduralizing the process utilized during review to ensure consistent plan review and change implementation; (5) requiring increased field monitoring by security management to ensure regulatory commitments are met via strict procedural adherence; and (6) performing independent assessments and self-assessments of the Security Plan implementation using NRC inspection criteria as a guide.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

During the July 16, 1997 conference, you took exception with some of the apparent violations described in the June 24, 1997 inspection report. Specifically, you stated that: (1) USEC properly marked SECRET-Restricted Data (SRD) combination records at the highest classification level (Apparent Violation 70-7001/97005-02); (2) USEC provided adequate training to a Computer System Security Officer (CSSO) (Apparent Violation 70-7001/97005-05b); and (3) USEC properly marked a classified magnetic storage device

(Apparent Violation 70-7001/97005-05c). After careful consideration of your statements and documentation, the NRC has determined that your marking practices did not violate NRC requirements and has, therefore, withdrawn violations 70-7001/97005-02 and 70-7001/97005-05c. However, the NRC maintains that training of a CSSO was not adequate because the CSSO interviewed did not know how to properly dispose of a Bernoulli disk (i.e., removable magnetic data storage) containing classified information, a basic fundamental of CSSO training.

While reviewing the facts outlined in NRC Inspection Report 70-7001/97005(DFS), dated June 24, 1997, we noted an error in the first paragraph of Section 6.b, in that references to separation distances of classified computer equipment from unclassified data communication lines should have been 1 foot, not 3 feet.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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.

Sincerely,

for A. Bill Beach
Regional Administrator

Certificate No. GDP-1
Docket No. 70-7001

Enclosure: Notice of Violation

NOTICE OF VIOLATION

United States Enrichment
Corporation (USEC)
Bethesda, MD

Docket No. 70-7001
Certificate No. GDP-1
EA 97-267

During an NRC inspection conducted on May 5 - 9, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- I. 10 CFR 76.9(a) requires, in part, that information provided to the Commission be complete and accurate in all material aspects.
 - A. Section 8. of the Security Plan for the Protection of Classified Matter (Security Plan) submitted by USEC in the May 31, 1996 revision of its application, states, in part, that the classified storage rooms meet the requirements for a true vault¹ as described in DOE Order 5632.1C, "Protection and Control of Safeguards and Security Information," without an Alarm system, i.e., concrete construction, true floor to true ceiling, penetrations sealed or protected by anchored bars, and metal doors possessing R1-rated combination locks.

Section 4. of DOE Order 5632.1C states, in part, that the definitions of commonly used terms are provided in the "Safeguards and Security Definitions Guide," which is maintained and distributed by the Office of Safeguards and Security. Section 23.0 of the Safeguards and Security Definitions Guide defines a vault as a windowless enclosure that is resistant to forced entry and has a DOE-approved system which detects unauthorized entry.

Contrary to the above, on May 31, 1996, the United States Enrichment Corporation (USEC) failed to provide to the Commission complete and accurate information in all material aspects concerning its Security Plan for the Protection of Classified Matter (Security Plan) in that Section 8 of the submitted Security Plan described the Barrier Lab in the C-710 building as meeting the requirements of a "true vault." However, the lab had windows and therefore did not meet the definition of a true vault (a true vault is a windowless enclosure). This information was material to the NRC because the Commission relied on it to grant USEC a certificate of compliance.
(01013)

1. DOE Order 5632.1C uses the term "vault" as opposed to the term "true vault" used in the Paducah Security Plan.

- B. Section 18. of the Security Plan submitted by USEC in the January 19, 1996 revision of its application, describes telecommunications of classified information and states that the Paducah Plant "is presently operating under a DOE-approved Telecommunications Operation Plan."

Contrary to the above, on January 19, 1996, the United States Enrichment Corporation (USEC) failed to provide to the Commission complete and accurate information in all material aspects concerning its Security Plan for the Protection of Classified Matter (Security Plan), as evidenced by the examples below: (01023)

1. On January 19, 1997, USEC failed to provide the NRC with accurate information in that the Paducah Plant was not operating under a DOE-approved Telecommunications Operation Plan as stated in Section 18. of the Security Plan.
2. On January 19, 1996, USEC failed to provide the NRC with the correct status of the Paducah Communication Security (COMSEC) account in that Section 18.2 of the Security Plan stated that the DOE COMSEC account was closed when, in fact, the account was still active;
3. On January 19, 1996, USEC failed to provide the NRC with complete and accurate information in that Section 18.4 of the Security Plan did not accurately list Paducah's secure telecommunications equipment holdings; and
4. On January 19, 1996, USEC failed to provide the NRC with complete and accurate information in that Section 18.6 of the Security Plan did not provide a complete listing of Paducah's COMSEC equipment and keying material.

This information was material to the NRC because the Commission relied on it to grant USEC a certificate of compliance.

- II. Condition 8 of the certificate of compliance for the Paducah Gaseous Diffusion Plant requires, in part, that USEC conduct its operations in accordance with the statements and representations contained in the certification application dated September 15, 1995, and revisions dated January 19, 1996, and May 31, 1996.

Contrary to the above, as of May 5, 1997, numerous aspects of the approved Security Plan for the Protection of Classified Matter were not implemented, as evidenced by the following examples, each of which constitutes an individual violation:

A. Violations Associated with Perimeter Security:

1. Sections 1. and 5. of the approved Security Plan submitted by USEC in its application dated September 15, 1995, contain Figures 1-1 and 5-1. The figures show the controlled access area (CAA) barrier to be just south of building C-720. However, USEC failed to accurately identify the location of the CAA barrier of the plant, which was near building C-720,. (02013)
2. Section 1.2.3 of the Security Plan submitted by USEC in the May 31, 1996 revision of USEC's application, requires, in part, that liaison be maintained between the Paducah Site and Facilities Support staff and the safeguards and security representative for the Regulatory Oversight Agreement (ROA), ensuring that the appropriate level of safeguards and security, as well as regulatory compliance, is maintained for all site interests. However, USEC failed to implement Section 1.2.3 of the Security Plan after the ROA expired on March 3, 1997. (02023)
3. Section 6.2.3 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application, requires, in part, that Police Operations personnel receive a total of 24 hours of annual training in nine subject areas listed therein. However, USEC failed to provide the required number of hours of training for each Police Operations member. (02033)
4. Section 6.2.3 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application requires, in part, that security response exercises be conducted periodically. However, USEC informed NRC that the periodic security response exercises, which were conducted monthly until March 1996, were stopped because of resource constraints. (02043)
5. Section 6.2.4 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application requires, in part, that newly hired Police Operations personnel successfully qualify via knowledge, testing, and performance in all aspects identified by the job task analysis listed in Section 6.2.3. Section 6.2.3 requires, in part, that Police Operations personnel receive training in nine subject areas listed therein. However, USEC failed to provide the initial job qualification training in the nine subject areas for all Police Operations personnel. (02053)

6. Section 6.2.6 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application requires, in part, that Police Operations personnel conduct random patrols not to exceed two hours [frequency, not duration of performance] of the CAA and those areas in which special nuclear material of low strategic significance is stored. However, USEC failed (1) to conduct the required number of random patrols in that only three of the required six patrols of the CAA during the 12-hour day shift were conducted and (2) to conduct patrols of the CAA in a random manner in that the 12-hour night shift patrols were being conducted on an hourly basis. (02063)
7. Section 6.2.7 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application requires, in part, that each on-duty Police Operations member be trained and issued a protective gas mask. However, USEC failed to provide the required gas masks to all members of the Police Operations force. (02073)
8. Section 6.8 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application, requires, in part, that the management of the key and lock program be identified in the Paducah SPP P-GP-61, "Master Key System." However, USEC failed to identify in the Paducah SPP P-GP-61, "Master Key System," the management of the key and lock program. (02083)
9. Section 8.2.2 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application, requires, in part, that the Police Operations shift commander arrange for the railroad gates in the CAA fence line to be opened. However, USEC failed to ensure that the Police Operations shift commander arrange for the railroad gates in the CAA fence line to be opened, in that the coordination was conducted by the Police Operations shift lieutenant. (02093)
10. Section 8.2.3 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application requires, in part, that upon being alerted by the plant shift superintendent that the request for mutual aid has been made and the responding emergency forces will require access to the CAA, the Police Operations shift commander will provide assistance and escorts for the responders. However, USEC failed to ensure that plant procedures concerning the escort of mutual aid responders were consistent with the approved Security Plan in that the implementing procedure, "Access Control," identified no instruction on providing escorts. (02103)

11. Section 8.3 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application requires, in part, that Visitor Control be responsible for coordinating visits to other Department of Energy and NRC facilities containing classified information. However, USEC failed to identify the correct organization for coordinating classified visits in that Visitor Control did not coordinate such visits. (02113)
12. Section 8.6 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application requires, in part, that unissued badge stock and badges awaiting destruction be kept in a locked repository (four drawer safe) in Security (trailer C-102-T-02) when unattended. However, USEC failed to properly store badge stock in that badge materials were stored in a room that was locked by a Unican 1000 push button door lock. (02123)

B. Violations Associated with Storage and Control of Classified Matter:

13. Section 1.3 of the Security Plan submitted by USEC in the January 19, 1996 revision of its application, requires, in part, that the Paducah classified mailing address include reference to United States Enrichment Corporation. However, USEC failed to use the approved classified mailing/shipping address, in that Lockheed Martin Utility Services was referenced in the classified mailing/shipping address, not the United States Enrichment Corporation. (02133)
14. Section 2. of the approved Security Plan submitted by USEC in its revisions dated January 19 and May 31, 1996, contains Figures 2-2 and 2-3 that describe the Paducah Police Operations and the Security Organization. However, USEC failed to conduct operations in accordance with the Paducah Police Operations and Security Organization charts in that Figures 2-2 and 2-3 of the approved plan were no longer applicable because the Paducah Police operations and the security organization had been reorganized. (02143)
15. Section 6.4 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application requires, in part, that upon completing checks of the repositories, Police Operations personnel place their initials in the "guard check" section of SF-702 ["Security Container Check Sheet"]. However, USEC failed to document the performance of physical checks in accordance with the approved Security Plan in that Police Operations personnel swiped a "bar code" that was affixed to the containers/vaults/cages rather than initialing on the SF-702 forms. (02153)

16. Section 6.6.3 of the Security Plan submitted by USEC in the May 31, 1996 revision of its application requires, in part, that custodians of security containers maintain a Form-702 and that records of security container and security area (i.e., seal cages) checks be maintained for a period of 90 days. However, USEC failed to maintain SF-702 forms for the seal cages in the C-333 and C-720 buildings and the receiving booth in the C-400 building. (02163)
17. Section 17. of the Security Plan submitted by USEC in the January 19, 1996 revision of its application requires, in part, that infractions of regulations, losses, compromises, or possible compromises of classified matter be reported to the NRC's Division of Security [now the Division of Facilities and Security]. However, USEC failed to ensure that plant procedures concerning notifications were consistent with the Security Plan and, when required, failed to provide notifications to the NRC's Division of Security [now the Division of Facilities and Security]. (02173)

C. Violations Associated with Protection of Classified Matter:

18. Section 19. of the Security Plan submitted by USEC in the January 19, 1996 revision of its application, requires, in part, that ADP security plans be developed in accordance with the Master ADP Security Plan for Microcomputer Resources Processing Classified Information, dated November 2, 1993. Section II.B.5 of the Master ADP Security Plan for Microcomputer Resources Processing Classified Information, dated November 2, 1993, requires, in part, that unclassified data communication lines are not placed within 1 foot of a microcomputer resource processing classified information. However, USEC failed to maintain required separation between an unclassified data communication line and a microcomputer resource processing classified information, in that a classified microcomputer located in building C-302 was located within 1 foot of a jack for an unclassified data communication line. (02183)
19. Section I.A of the Master ADP Security Plan for Microcomputer Resources Processing Classified Information, requires, in part, that the location and basic information for each classified microcomputer resource be found in the individual Security Plan titled, "ADP Security Plan for Microcomputer Resources Processing Classified Information." The individual microcomputer Security Plan identifies specific information relating to the Computer System Security Officer (CSSO). Section 12., "CSSO and Alternate CSSO Acknowledgment of Training and ADP Security Responsibilities," of the "ADP Security Plan for Microcomputer Resources Processing Classified Information" requires, in part, that the CSSO receive training courses. However, USEC failed to provide

adequate training to a CSSO of a classified computer, in that the CSSO did not know how to properly dispose of a Bernoulli disk (i.e., removable magnetic data storage) containing classified information. (02193)

20. Section II.B.5, "Separation Protection Controls," of the Master ADP Security Plan requires, in part, that microcomputer resources used to process classified information are separated 3 feet from ADP equipment used to process unclassified information. However, USEC failed to maintain the required separation of classified and unclassified computer hardware for the classified PC located in the C-102-T-02 trailer, in that an unclassified PC was located within 3 feet of the trailer's classified PC. (02203)

These violations represent a Severity Level III problem (Supplement III).

Pursuant to the provisions of 10 CFR 76.70, the United States Enrichment Corporation (USEC) 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 III and the Paducah Resident Office, 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 violation, 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 certificate 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.

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 Lisle, Illinois
this 22nd day of September 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-3415

October 28, 1997

EA 97-417

Virginia Commonwealth University
ATTN: William L. Dewey, Ph.D.
Vice President for Research
and Graduate Studies
P. O. Box 112, MCV Station
Richmond, Virginia 23298-0001

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT NO. 45-00048-17/97-01)

Dear Dr. Dewey:

This refers to the inspection conducted on August 11-13, 1997, at your facility in Richmond, Virginia. The purpose of the inspection was to determine whether activities authorized by the license were conducted safely and in accordance with regulatory requirements. The results of the inspection were discussed with you on August 13, 1997, and were formally transmitted to you by letter dated September 4, 1997. That letter also provided you the opportunity to respond to the apparent violations in writing or request a predecisional enforcement conference. Subsequently, you declined a conference, and by letter dated October 2, 1997, you submitted additional information to us regarding the apparent violations, the root causes, and your corrective actions to preclude recurrence. We have reviewed the inspection results and the additional information you provided and have concluded that sufficient information is available to determine the appropriate enforcement action in this matter.

Based on the information developed during the inspection and the information that was provided in your October 2, 1997 letter, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding them are described in detail in the subject inspection report.

Violation A includes two examples of the failure to secure licensed materials against unauthorized removal or access. The root cause of the violation was the failure of the authorized users to properly secure laboratories housing radioactive materials when unattended. A similar violation was identified at your facility by the NRC in June 1996, when 4 of 20 laboratories were found to contain unsecured licensed materials. Violation A is a repeat violation because fully effective implementation of the corrective actions for the June 1996 violation should have precluded recurrence of the circumstances leading to Violation A.

Security of licensed materials is a significant safety issue because of the potential radiological consequences of access to these materials by unauthorized and/or untrained individuals. The NRC expects licensees to maintain a high degree of compliance with security requirements to properly control licensed materials. In this case, although only two of

74 laboratories were found to be unlocked, the laboratories contained significant quantities of licensed material including quantities of Phosphorus-32 (P-32). Theft or loss of P-32 could pose potential risk since this radionuclide has a high specific activity which, if uncontrolled, could result in substantial unplanned exposures. In addition, repetitive violations are of significant regulatory concern because they indicate a failure to implement effective corrective actions for a previous violation. Therefore, Violation A is classified in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2250 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process described in Section VI.B.2 of the Enforcement Policy. Your corrective action included retraining and counseling of appropriate staff members and, more importantly, planned implementation of strict disciplinary actions for security violations. The NRC concluded that: (1) your policy and procedural controls, if properly implemented, should be effective in controlling licensed materials; (2) radioactive materials security has received increased emphasis during periodic audits and surveillances; (3) research personnel now have a heightened awareness of security; and, (4) the incidence of documented security violations has decreased. Based on these facts, the NRC determined that credit was warranted for the factor of Corrective Action, resulting in no civil penalty for the Severity Level III violation.

Therefore, to encourage prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

Violation B involves the failure to wear required protective clothing while handling unsealed radioactive materials. Your September 28, 1997 license renewal application stated that, when applicable, protective clothing should be worn. During our inspection, your radiation safety staff informed the NRC inspector that individuals were required to wear a lab coat when unsealed radioactive material was handled. Your corrective actions included obtaining proper protective clothing for the individual involved, and planned revisions to your program to increase emphasis on compliance with protective clothing requirements during training and your routine laboratory inspections. Violation B has been characterized as a Severity Level IV violation.

The NRC has concluded that the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved are adequately addressed on the docket in your letter to the NRC dated October 2, 1997. Therefore, no response to this letter is required unless the description therein or described above does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information,

VCU

3

you should follow the instructions specified in the enclosed Notice. With the issuance of the Notice of Violation, EEI 45-00048-17/97-01-01 and EEI 45-00048-17/97-01-02 are closed.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any response will be placed in the NRC Public Document Room (PDR). To the extent possible, a response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,

Original Signed by
Luis A. Reyes

Luis A. Reyes
Regional Administrator

Docket No. 030-03297
License No. 45-00048-17

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Virginia

NOTICE OF VIOLATION

Virginia Commonwealth University
Medical College of Virginia

Docket No. 030-03297
License No. 45-00048-17
EA 97-417

During an NRC inspection conducted on August 11-13, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," (NUREG-1600), the violations are listed below:

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, controlled area means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on August 12 and 13, 1997, the licensee did not secure from unauthorized removal or limit access to approximately 2.25 millicuries (mCi) of phosphorus 32 (P-32) and 1.4 mCi of sulfur 35 (S-35) located in Room 2-030 of Sanger Hall and approximately 3.75 mCi of P-32, 3.12 mCi of hydrogen 3, 1 mCi of S-35, 1.34 mCi of carbon 14, and 1 mCi of iodine 125 located in Room H-515 of the licensee's Medical Sciences Building, which were controlled areas, nor did the licensee control and maintain constant surveillance of these licensed materials. (01013)

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

- B. Condition No. 51 of NRC License No. 45-00048-17 requires that except as specifically provided otherwise in the license and as provided in 10 CFR 35.51, the licensee shall conduct its program in accordance with statements, representations, and procedures contained in the documents, including any enclosures, listed on page 14 of the license. The list includes the license renewal application dated September 28, 1993.

Attachment 10.2.4.a of the license renewal application dated September 28, 1993, described the rules for the use of radioactive materials in research areas. Item 16 stated that, when applicable, protective clothing and gloves should be worn. The licensee radiation safety staff stated that wearing a laboratory coat was required when handling unsealed licensed materials.

Contrary to the above, on August 13, 1997, an individual handling unsealed licensed materials, in Room 2-108 of the Massey Cancer Center, was not wearing a laboratory coat. (02014)

This is a Severity Level IV violation (Supplement IV).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved are already adequately addressed on the docket in your letter to the NRC dated October 2, 1997. However, Virginia Commonwealth University is required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to Notice of Violation," and send it to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D. C. 20555 with a copy to the Regional Administrator, Region II, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Under the authority of Section 182 of the Act, 42 U. S. C. 2232, any response shall be submitted under oath or affirmation.

If you choose to provide a response, it will be placed in the NRC Public Document Room (PDR), and 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.

Dated at Atlanta, Georgia
this 28th day of October 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-3415

October 29, 1997

EA 97-419

Virginia Power Company
ATTN: Mr. Doug Holley
Plant Manager
Chesterfield Power Station
500 Coverdale Road
Chester, Virginia 23836

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT 999-90002/97-07)

Dear Mr. Holley:

This refers to the special, announced inspection conducted by this office on August 14, 1997, at your facility in Chester, Virginia. The purpose of the inspection was to review the circumstances surrounding the unauthorized removal of a generally licensed fixed gauge from equipment at your facility. The results of the inspection were discussed with you on August 14, 1997, and were formally transmitted to you by letter dated September 4, 1997. That letter also provided you the opportunity to respond to the apparent violations in writing or request a predecisional enforcement conference. Subsequently, you declined a conference, and by letter dated September 29, 1997, you submitted additional information to us regarding the apparent violations, the root causes, and your corrective actions to preclude recurrence. We have reviewed the inspection results and the additional information you provided and have concluded that sufficient information is available to determine the appropriate enforcement action in this matter.

Based on the information developed during the inspection and the information that was provided in your September 29, 1997, letter, the Nuclear Regulatory Commission (NRC) has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. Violation A involves the unauthorized removal, on June 17, 1997, of a generally licensed fixed gauge containing about 72 millicuries (mCi) of cesium 137 (Cs-137) from its permanent mounting to a fly ash hopper. The gauge was removed by a contract worker who was neither trained nor licensed to perform such activities. Your Radiation Safety Officer discovered that the gauge had been moved from its mounting on August 12, 1997. The root cause of Violation A was the failure to control contract work affecting the gauge. You failed to inform the contractor of the presence of the gauge on the fly ash hopper before authorizing work and failed to require the use of established procedures to control the work.

Violation A represents a significant regulatory and safety concern because individuals working near the removed gauge were unaware of the potential hazard and consequently took no action to monitor their radiation exposure or control the device. It was fortuitous that the device's shutter was not in a fully open position during the period in which it was not properly controlled. Due to the lack of knowledge by the contract workers, the gauge also could have been lost or disposed of inadvertently. This violation indicates a significant lack of control of the gauge, and a lack of training in security and radiation protection measures established to control licensed material at your facility. Therefore, in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, Violation A is classified as a Severity Level III violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$5,550 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process described in Section VI.B.2 of the Enforcement Policy. As documented in detail in the inspection report and your September 29, 1997, response, your corrective actions included prompt investigation and correction of the violation, staff training on restrictions associated with instrumentation containing radioactive material, and the implementation of steps to ensure that labels remain legible. Based on these actions, the NRC determined that credit was warranted for the factor of Corrective Action, resulting in no civil penalty for the Severity Level III violation.

Therefore, to encourage prompt identification and comprehensive correction of violations, I have been authorized not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

Violation B, characterized as a Severity Level IV violation, involves the failure to maintain the radiation warning labels of fixed gauges in a legible condition.

The NRC has concluded that the reasons for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved are adequately addressed on the docket in your letter to the NRC dated September 29, 1997. Therefore, no response to this letter is required unless the description therein or described above 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. With issuance of the Notice of Violation, EEI 45-00048-17/97-01-01 and EEI 45-00048-17/97-01-02 are closed.

In addition, your September 29, 1997, response notified the NRC that you have completed the four actions specified in NRC Confirmatory Action Letter No. 2-97-005 issued by this office on August 18, 1997. Based on the information provided in your letter, we have concluded that the requirements stated in the August 18, 1997, Confirmatory Action Letter have been satisfied. Consequently, this Confirmatory Action Letter is considered closed.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any response will be placed in the NRC Public Document Room (PDR). To the extent possible, a response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,

Original Signed by
Luis A. Reyes

Luis A. Reyes
Regional Administrator

Docket No. 999-90002
General License (10 CFR 31.5)

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Virginia

NOTICE OF VIOLATION

Virginia Power Company
Chesterfield Power Station

Docket No. 030-03297
License No. 45-00048-17
EA 97-419

During an NRC Inspection conducted on August 14, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 31.5(c)(3) requires that any person who acquires, receives, possesses, uses, or transfers byproduct material in a device pursuant to a general license shall assure that tests for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, and other testing, installation, servicing, and removal from installation involving the radioactive material, its shielding or containment, are performed: (1) in accordance with the instructions provided by the labels; or (2) by a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to perform such activities.

Contrary to the above, on June 17, 1997, the licensee failed to assure that activities involving removal of the licensee's Kay Ray model 5062 fixed gauge containing 72 millicuries of cesium 137 was performed in accordance with the instructions provided by the labels or by a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to perform such activities. Specifically, the gauge was removed by a person employed by a contractor who was not specifically licensed to remove generally licensed fixed gauges. (01013)

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

- B. 10 CFR 31.5(c)(1) requires that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by such labels.

Contrary to the above, as of August 14, 1997, the licensee did not assure that labels on various fixed gauges were maintained on the devices. Specifically, required labels on fixed gauges mounted on fly ash hoppers were obscured by fly ash or other materials and were not legible. (02014)

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

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved are already adequately addressed on the docket in your letter to the NRC dated September 29, 1997. However, Virginia Power Company is required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to Notice of Violation," and send it to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D. C. 20555 with a copy to the Regional Administrator, Region II, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Under the authority of Section 182 of the Act, 42 U. S. C. 2232, any response shall be submitted under oath or affirmation.

If you choose to provide a response, it will be placed in the NRC Public Document Room (PDR), and 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.

Dated at Atlanta, Georgia
this 29th day of October 1997

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

July 28, 1997

EA 97-244

Westinghouse Electric Corporation
Commercial Nuclear Fuel Division
ATTN: Mr. J. A. Fici, Division General Manager
Energy Center
P.O. Box 355
Pittsburgh, PA 15230-6600

**SUBJECT: NOTICE OF VIOLATION (NRC SPECIAL INSPECTION REPORT
NO. 70-1151/97-203)**

Dear Mr. Fici:

This refers to the inspection conducted on May 5 - 7, 1997, at the Westinghouse Commercial Nuclear Fuel Division facility in Columbia, South Carolina. The inspection was conducted to review the circumstances that led to the reported event on April 15, 1997, involving two low-enriched fuel rods that could not be located. On May 27, 1997, the NRC conducted a re-exit briefing via telephone with members of your staff, and on June 25, 1997, issued the inspection report detailing our findings. A predecisional enforcement conference was held with you and members of your staff on July 9, 1997, to discuss the apparent violations, their root causes, and your corrective action.

Based on the information developed during the inspection, and the information that you provided during the conference, the NRC has determined that five violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. Specifically, the violations involved Westinghouse's failure to: (1) implement proper notification procedures of the event to the NRC; (2) provide adequate training for certain employees that handled Special Nuclear Material (SNM); (3) provide adequate procedures for handling and testing of lead-filled rods; (4) comply with numerous Department of Transportation (DOT) requirements; and (5) adequately implement Westinghouse's Material Control and Accounting (MC&A) program.

The NRC is particularly concerned that your staff had prior opportunities to identify the unaccounted for fuel rods. Specifically, on October 16, 1996, the "7-day report" included the two fuel rods in question, but was not acted upon by the responsible Material Service Attendant (MSA). In addition, from October 16, 1996, to March 20, 1997, the MSA team manager neither required that the location of the fuel rods be determined, in accordance with the "7-day report" requirements, nor reported the status of the fuel rods to the safeguards coordinator, as required by your procedures.

The NRC recognizes that the actual or potential safety consequences were minimal in this case. However, the violations in the enclosed Notice are of significant regulatory concern because, collectively, they are indicative of inadequate management attention toward licensed activities. The lack of management oversight is evidenced by the fact that Westinghouse employees and management did not have a high level of sensitivity to item control and accounting. Given the loss of control of the two unirradiated fuel rods, the number of violations that are related to this single event, and the number of prior opportunities that could have identified the event progression sooner, the violations have been classified in the aggregate in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$12,500 is considered for a Severity Level III problem. Because your facility has not been the subject of escalated enforcement actions within the last 2 years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. In this case, the NRC has determined that credit is warranted for your prompt and comprehensive corrective action. Specifically, your corrective action that you discussed during the July 9, 1997 conference included: (1) stopping shipments of all replica fuel assemblies and non-product fuel rods; (2) holding a management meeting to emphasize the importance of item control and to ensure that all managers understood NRC requirements; (3) providing immediate training to personnel involved in the event; (4) establishing a new procedure for manufacture and movement of replica fuel rods; (5) developing a plan to provide an improved method to ensure a timely final accounting of all fuel rods when a region of fuel has been completed; and (6) instilling a high level of sensitivity to item control and accounting. Of particular note is the seriousness with which you viewed this event as demonstrated by your plans to shut down the facility, if the fuel rods had not been found by April 18, 1997.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. You should note that issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In addition, given that the violations occurred during a non-routine operation, the NRC is concerned that similar problems may occur in other non-routine activities. Therefore, as part of your response, please provide any corrective actions taken or planned to prevent recurrence of similar violations in other non-routine activities. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Westinghouse Electric Corporation

-3-

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.

Sincerely,
Original signed by

Elizabeth Q. Ten Eyck, Director
Division of Fuel Cycle Safety
And Safeguards, NMSS

Docket No. 70-1151
License No. SNM-1107

Enclosure: Notice of Violation

NOTICE OF VIOLATION

Westinghouse
Commercial Nuclear Fuel Division
Columbia, South Carolina

Docket No. 70-1151
License No. SNM-1107
EA 97-244

During an NRC inspection conducted on May 5 - 7, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 74.11 requires, in part, that the licensee notify the NRC Operations Center within one hour of discovery of any loss or theft or other unlawful diversion of SNM [Special Nuclear Material] which the licensee is licensed to possess.

10 CFR 20.2201(a)(1)(ii) requires, in part, that the licensee provide a telephone report within 30 days after the occurrence of any lost, stolen, or missing licensed material becomes known to the licensee, all licensed material in a quantity greater than 10 times the quantity specified in Appendix C [0.01 μ Ci] to part 20 that is still missing at this time.

Licensee Condition SG-1.1 states, in part, that the licensee shall follow Chapters 1.0 through 9.0 of its "Fundamental Nuclear Material Control (FNMC) Plan."

Section 2.2.2 of the licensee's FNMC Plan requires, in part, that after resolving item and/or material control anomalies, Columbia Plant Manager, within 30 days or less, submit initial written report to the NRC.

Contrary to the above, the licensee failed to provide the required notifications in that:

1. On October 16, 1996, the licensee had indications that two fuel rods were missing and on October 20, 1996, failed to notify the NRC Operations Center within 1 hour¹;
 2. On October 16, 1996, the licensee had indications that two fuel rods were missing and on November 19, 1996, failed to submit a telephone report to the NRC within 30 days. (01013)
- B. License Condition Number (No.) S-1 of License No. SNM-1107 requires that licensed materials be used in accordance with statements, representations, and conditions in the licensee's License Application dated April 30, 1995, and supplements thereto.

Enclosure

¹ NUREG-1065, "Acceptable Standard Format and Content for the Fundamental Nuclear Material Control Plan (FNMCPL) Required for Low-Enriched Uranium Facilities," grants licensees 72 hours to determine whether special nuclear material is missing.

Paragraph 2.1.2 of Chapter 2 of the License Application requires, in part, that, first level managers are also responsible for assuring that personnel under their jurisdiction receive adequate training.

Paragraph 3.4.2 of Chapter 3 of the License Application requires, in part, that "training will be provided for every individual in the Columbia Fuel Fabrication Facility (CFFF), commensurate with their duties. Formal training programs will be developed and implemented to enhance and augment procedure review and acknowledgment described in Paragraph 3.4.1(d) of this Chapter, and training responsibilities described in Chapter 2.0 of this License Application. Training records will be maintained in accordance with Section 3.8 of this Chapter."

Contrary to the above, as of October 10, 1996, the licensee failed to properly implement its training program with regard to handling SNM in that:

1. The Material Service Attendant (MSA) First Level Manager did not assure that MSA personnel received proper training with regard to the use of Mechanical Operating Procedure (MOP) 759006, "ADU Fuel Rod Staging Area Instructions," and implementation of the 7-day report requirements;
 2. The formal training program did not document the training received by an MSA in order for that individual to qualify for the position;
 3. Training of the MSA First Level Manager was not effective in assuring that licensee personnel had an adequate understanding of the duties and responsibilities of the position, as evidenced by the failure to:
 - (a) routinely review and assure proper disposition of items listed in the 7-day report from October 1996 through January 1997; and
 - (b) once notified of the listed item, to disposition it in a timely manner or promptly notify the Safeguards Coordinator. (01023)
- C. License Condition Number (No.) S-1 of License No. SNM-1107 requires that licensed materials be used in accordance with statements, representations, and conditions in the license's License Application dated April 30, 1995, and supplements thereto.

Section 3.4.1 of Chapter 3 of the License Application requires that operations to assure safe, compliant activities involving nuclear material will be conducted in accordance with approved procedures. Section 3.4.1(a.3) requires that the salient utility of Category-3 Procedures will be to provide training and instructions, including health, safety, and safeguards, for the Operations, Maintenance, Inspection, and Analytical Services Functions.

Contrary to the above, on October 5, 1996, the licensee failed to provide adequate procedures for handling and testing lead-filled rods. Specifically, Special Routing 13382 was inadequate in that it lacked many of the instructions for the operation of the various equipment stations that were required by the routine Mechanical Operating Procedures for those stations; it referenced other Quality Control Instruction procedures that could not be followed for the planned operation; and the review and approval process failed to identify that the procedure could not be followed as written. (01033)

- D. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 171 through 189.

49 CFR 171.2(a) prohibits any person from offering hazardous material for transportation unless, among other requirements, the hazardous material is properly classified, described, packaged, marked, labeled, and in condition for shipment required or authorized under the Hazardous Material Regulations (49 CFR Parts 171-177).

10 CFR 110.5 prohibits the export of special nuclear material (SNM), including unirradiated fuel, unless authorized by a general or specific license issued under Part 110.

10 CFR 71.12(a) issues a general license to any licensee of the Commission to transport, or deliver to a carrier for transport, licensed material in a package for which a license, Certificate of Compliance (CoC), or other approval has been issued by the NRC. 10 CFR 71.12(c)(2) requires the licensee to comply to the terms and conditions of the NRC CoC and the applicable requirements of subparts A, G, and H of this part.

NRC CoC, No. 9239, Rev. 4, dated March 21, 1996, requires that the minimum transport index (TI) for a shipment of material in the licensee's shipping containers designated as MCC-3, MCC-4, or MCC-5, be shown on the shipping label for nuclear criticality safety as 0.4.

Contrary to the above, on October 10, 1996, the licensee inadvertently shipped two unirradiated fuel rods from their site in Columbia, South Carolina, to an overseas location, the Temelin Plant in the Czech Republic, and the licensee failed to comply with the transportation requirements for the shipment of licensed material specified in 10 CFR 71.5 and 49 CFR 170 through 189 in that:

1. The shipment of transport container No. M508 was classified as non-hazardous; however, two unirradiated fuel rods which contained hazardous material were present, a violation of 49 CFR 171.2(a);
 2. The shipment of transport container No. M508 failed to comply with several DOT hazard communication requirements, including those for shipping papers [49 CFR 172.200(a)] in that it failed to describe the hazardous material, marking [49 CFR 172.301(a)] in that it failed to mark the package with the proper shipping name and identification number, and labeling [49 CFR 172.403(a)] in that it failed to label the package in accordance with the requirements;
 3. The shipment of transport container No. M508 resulted in the export of two unirradiated fuel rods, a quantity that requires an NRC specific license under 10 CFR 110.5 (the licensee used NRC License No. XCOM1082 rather than NRC License No. XSNM02785, which authorizes the export of a specified amount of SNM); and
 4. The shipment of transport container (designated MCC-5) No. M508 did not comply with the terms and conditions of NRC CoC Number 9239, in that transport container No. M508 did not indicate a minimum transportation index of 0.4 on the label for criticality safety as required by the CoC. (01043)
- E. Licensee Condition SG-1.1 states, in part, that the licensee shall follow Chapters 1.0 through 9.0 of its "Fundamental Nuclear Material Control (FNMC) Plan."
- 10 CFR 74.31(a)(1) requires the licensee's material control and accounting (MC&A) system to confirm the presence of special nuclear material (SNM).
- 10 CFR 74.31(c)(6) requires, in part, that the licensees maintain current knowledge of items when the sum of the time of existence of an item, the time to make a record of the item, and the time necessary to locate the item exceeds 14 days, and also store and handle, or subsequently measure, items in a manner so that unauthorized removals of items will be detected.
- 10 CFR 74.15(a) requires, in part, that each licensee who receives and ships SNM shall complete a Nuclear Material Transaction Report (DOE/NRC Form 741) in accordance with instructions in NUREG/BR-0006, "Instructions for Completing Nuclear Material Transaction Reports and Concise Note Forms." Critical MC&A Procedure NMM-CP-650, "Nuclear Material Shipments," requires that all SNM shipped from the Columbia plant shall be measured or received a measurement

verification before departing the plant site, and DOE/NRC Form 741 with shipper's values must be completed by the assigned personnel within one day of the shipment.

Section 6.2 of the licensee's FNMC Plan requires that the licensee maintains control of items and verifies material shipment and removal from the item control program.

Contrary to the above, from October 5, 1996, through April 17, 1997, the licensee failed to adequately implement its MC&A program in that the first general performance objective of 10 CFR Part 74.31 was not met, and the item control program failed to confirm the presence of two fuel rods. In addition, the licensee failed to maintain a current knowledge of items or make appropriate records when the items could not be located within 14 days. As a result of the loss of item control, the required DOE/NRC Form 741s were not generated. (01053)

These violations represent a Severity Level III Problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Westinghouse Electric Corporation 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 II, and to the Director, Office of Nuclear Material Safety and Safeguards, 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 violation, 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.

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

Notice of Violation

- 6 -

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 Rockville, Maryland
this 28th day of July 1997

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

December 22, 1997

EA No. 97-596

Mr. Scott Haines, President
Windsor Services, Inc.
Post Office Box 13787
Reading, Pennsylvania 19612-3787

Dear Mr. Haines:

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-15179/97-001)

This refers to the NRC inspection conducted on November 6, 1997 at your facility in Reading, Pennsylvania to determine whether activities authorized by your license were conducted safely and in accordance with NRC requirements. The inspection continued at the Skippack and Blooming Glen, Pennsylvania facilities of Haines and Kibblehouse, Inc. (H&K), another NRC licensee, after the NRC learned that control of licensed activities under your license appeared to have been transferred to H&K. Specifically, all your records had been transferred to H&K and the inspector observed that one of your gauges was stored at H&K's Blooming Glen office.

As described in the NRC inspection report sent to H&K on November 28, 1997, several apparent violations of NRC requirements were identified during the inspection. On December 12, 1997, a predecisional enforcement conference was conducted with you, as well as personnel from H&K, to discuss the violations, their causes, and your corrective actions. A copy of the enforcement conference report is enclosed. While we understand, based on the conference, that a gauge had been transferred to H&K by your company, and certain employees have responsibilities at both companies, you indicated (1) that you and your associates purchased Windsor Service from its previous owners, (2) that your company and H&K are separate entities, and (3) responsibility for the Windsor license had not been transferred to H&K. Therefore, NRC has evaluated separately the inspection findings related to the two licenses. This letter deals with the findings related to the Windsor license.

Based on the information developed during the inspection, and the information provided during the conference, the NRC has determined that four violations of NRC requirements were identified. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. These violations involve the (1) failure to notify the NRC, and secure NRC consent in writing, prior to a change in ownership which transferred control of the license to you and your associates from the previous owners of Windsor Service, Inc.; (2) failure to obtain a license amendment prior to using a new RSO; (3) failure to perform a review of the radiation safety program content and implementation; and (4) failure to provide annual refresher training to gauge users. The NRC is particularly concerned that the RSO had ceased performing the RSO duties in April 1997 and there was a lack of attention to your program.

Given the nature of the violations and the lack of control of, and attention to, licensed activities at your facility, the violations collectively represent a breakdown in control of licensed activities. Therefore, these violations have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation or problem. Because your facility has not been the subject of an escalated enforcement action within the last two inspections in 1992 and 1988, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were both prompt and comprehensive. These actions are described in the enforcement conference report.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized to not propose a civil penalty in this case. However, similar violations in the future could result in further escalated enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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 and its enclosure, will be placed in the NRC Public Document Room (PDR).

Sincerely,

Hubert J. Miller
Regional Administrator

Docket No. 030-15179
License No. 37-18494-01

Enclosures:

1. Notice of Violation
2. Enforcement Conference Report

ENCLOSURE

NOTICE OF VIOLATION

Windsor Service, Inc.
Reading, Pennsylvania

Docket No. 030-15179
License No. 37-18494-01
EA 97-596

During an NRC inspection conducted on November 6, 19 and 21, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the violations are listed below:

- A. 10 CFR 20.1101(c) requires that each licensee periodically (at least annually) perform a review of the radiation safety program content and implementation.

Contrary to the above, in 1994, 1995, and 1996, the licensee did not perform a review of the radiation safety program content and implementation. (01013)

- B. 10 CFR 30.34(b) requires, in part, that no license issued or granted pursuant to the regulations in 10 CFR Part 30, nor any right under a license be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission, after securing full information, find that the transfer is in accordance with the provisions of the Act and give its consent in writing.

Contrary to the above, in October of 1996, Windsor Service, Inc. transferred control of its license from the previous owners to new owners and did not allow the Commission to secure full information of the transfer to ensure that the transfer was in accordance with the Act, and obtain the Commission's consent in writing. (01023)

- C. Condition 12 of License No. 37-18494-01 requires that a specifically named individual perform the duties of the Radiation Safety Officer (RSO).

Contrary to the above, as of November 21, 1997, the specifically named individual was not performing the duties of the RSO. Specifically, the RSO stopped performing the duties of the RSO in April of 1997. (01033)

- D. Condition 20 of License No. 37-18494-01 requires that the licensee conduct its program in accordance with the statements, representations and procedures contained in the application dated February 3, 1995.

Item 8 of the application requires the licensee to provide annual refresher training to authorized users of the portable gauges.

Contrary to the above, as of November 21, 1997, the licensee did not provide annual refresher training to authorized users of the portable gauges in 1995 and 1996. (01043)

These violations are categorized in the aggregate as a Severity Level III problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Windsor Services, Inc. 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 I, 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 violation, 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.

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 King of Prussia, Pennsylvania
this 22nd day of December 1997

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

1. REPORT NUMBER
(Assigned by NRC. Add Vol., Supp., Rev.,
and Addendum Numbers, if any.)

NUREG-0940, PART III
VOL. 16, No. 2

2. TITLE AND SUBTITLE

Enforcement Actions: Significant Actions Resolved
Material Licensees
Semiannual Progress Report
July - December 1997

3. DATE REPORT PUBLISHED

MONTH	YEAR
April	1998

4. FIN OR GRANT NUMBER

5. AUTHOR(S)

Office of Enforcement

6. TYPE OF REPORT

Technical

7. PERIOD COVERED (Inclusive Dates)

8. PERFORMING ORGANIZATION - NAME AND ADDRESS (If NRC, provide Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address; if contractor, provide name and mailing address.)

Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

9. SPONSORING ORGANIZATION - NAME AND ADDRESS (If NRC, type "Same as above"; if contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.)

Same as above

10. SUPPLEMENTARY NOTES

11. ABSTRACT (200 words or less)

This compilation summarizes significant enforcement actions that have been resolved during the period (July - December 1997) and includes copies of letters, Notices, and Orders sent by the Nuclear Regulatory Commission to material licensees with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC, so that actions can be taken to improve safety by avoiding future violations similar to those described in this publication.

12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.)

Diagnostic Radiopharmaceuticals, Teletherapy, Brachytherapy,
Radiation Safety Program, Safety Evaluation, Quality Management
Program, HDR

13. AVAILABILITY STATEMENT

Unlimited

14. SECURITY CLASSIFICATION

(This Page)

Unclassified

(This Report)

Unclassified

15. NUMBER OF PAGES

16. PRICE

M98005253

Report Number (14) NUREG-0940-Vol. 16 No. 2 Pt. 3

Publ. Date (11)

199804

Sponsor Code (18)

NRC, XF

UC Category (19)

UC-000, DOE/ER

no 1332.15 in folder

19980622 076

DOE

DTIC QUALITY INSPECTED 1