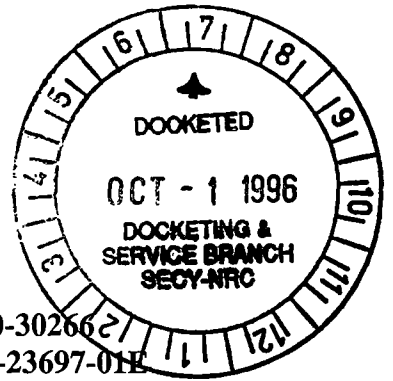


UNITED STATES
NUCLEAR REGULATORY COMMISSION



In the Matter of)

Innovative Weaponry, Inc.)
Albuquerque, New Mexico)

) Docket No. 030-302662
) License No. 30-23697-01E
) EA 96-170
) Notice of Violation

ANSWER TO NOTICE OF VIOLATION

This reply is filed pursuant to 10 C.F.R. § 2.205 in response to a Notice of Violation and Proposed Imposition of Civil Penalty issued by the U.S. Nuclear Regulatory Commission, Office of Enforcement on May 15, 1996. As directed, the licensee, Innovative Weaponry Incorporated (IWI), will address the following four matters in order.

- deny the violation(s) listed in this Notice, in whole or in part
- demonstrate extenuating circumstances
- show error in this Notice
- show other reasons why the penalty should not be imposed

1. Deny the violation(s) listed in this Notice, in whole or in part.

Licensee denies the violations to the extent and for the reasons set out in responses 1 and 2 set out in the Reply to Notice of Violation. Those responses are incorporated by reference.

2. Demonstrate extenuating circumstances.

- a. NRC has no jurisdiction as noted above.

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- b. There were no adverse consequences to public health and safety.
- c. The alleged acts were not intentional and were not without prior knowledge of management.
- d. The alleged acts were self-identified.
- e. Management attempted to correct the situation immediately upon discovery and none of the two instances recalled most of the items which were allegedly distributed contrary to license authority.
- f. Licensee realized no appreciable profit by either of the transactions and it is difficult to calculate, probably lost money.
- g. No accepted philosophy of enforcement is well served by the imposition of a penalty. Licensee had to spend tens of thousands of dollars to respond to this matter and suffered lost business in more tens of thousands. This is penalty enough. The licensee understands nuclear regulation is important and does not need an additional penalty to make the point. Anyone who knows the case or bothers to read the public record will know that an example has been set. Additional penalties of \$7,500 will not enhance the fact that the point has been made and a deterrent has been realized. Nor will added penalties contribute to encouragement of prompt identification or prompt comprehensive correction of violations. In fact, in this case, the alleged violations were promptly self-identified and prompt corrective action was initiated.

3. Show error in this Notice.

See again responses 1 and 2 in the Reply to Notice of Violation which are incorporated by reference for the purposes of showing error in the Notice. In addition, licensee asserts that the facts of this case do not warrant Level III action and escalated penalties. The acts were unintentional, posed no radiological risk and had no health or safety effects. Such events surely do not warrant "significant regulatory concern" but are only of minor concern. Indeed, it is inconceivable that the radiation sources involved here could ever be of anything but minor concern in light of the fact that such sources are so radiologically insignificant that they are not regulated beyond distribution.

4. Show other reasons why the penalty should not be imposed.

At page 34,382 of the Federal Register, vol. 60, no. 126 (Friday, June 30, 1995), the Commission stated in reference to materials licensees:

"The primary concerns for these licensed activities are individual radiation exposure and loss of control of material to the environment, both of which warrant a more financially meaningful penalty."

Since this case involves neither individual radiation exposure or loss of control of material to the environment, a "more financially meaningful penalty" is unwarranted.

In addition, the enforcement action has imposed a severe financial hardship on licensee. A fine of \$7,500 poses a serious cash flow problem for licensee. Certainly, the enforcement policy of the Commission is not intended to force companies out of business. There should be no penalty or the NRC should allow the penalty to be paid over a period of

18 months.

Another reason why the penalty should not be imposed is that the NRC standards for imposing penalties are too vague to meet standards of due process.

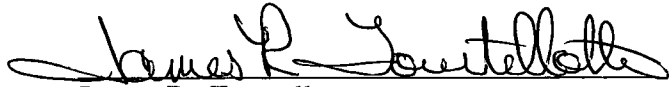
Finally, the penalty should not be imposed because the basic information upon which the decision is being made has not been made available to licensee in the preparation of its defense.

A handwritten signature in black ink, reading "James R. Tourtellotte". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

James R. Tourtellotte
Attorney-at-Law
Licensee Counsel

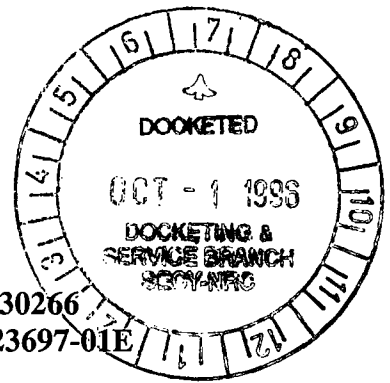
Proof of Service

Service is made in accordance with 10 C.F.R. § 2.701 by delivery to the NRC Public Document Room on October 1, 1996.

A handwritten signature in black ink, appearing to read "James R. Tourtellotte", written over a horizontal line.

James R. Tourtellotte
Attorney-at-Law

UNITED STATES
NUCLEAR REGULATORY COMMISSION



In the Matter of)

Innovative Weaponry, Inc.)
Albuquerque, New Mexico)

Docket No. 030-30266)

License No. 30-23697-01E)

EA 96-170)

Notice of Violation)

Certificate of Service

I hereby certify that copies of the foregoing Reply to Notice of Violation have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 C.F.R. § 2.701.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Dated at Arlington, Virginia, this
1st day of October, 1996.


James R. Tourtellotte
Attorney