

Orlando, Dominick

From: Corte, Lawrence J. <lcorte@fmi.com>
Sent: Friday, December 27, 2019 9:28 AM
To: Holiday, Sophie
Cc: Chris Pugsley; Anthony Thompson; Orlando, Dominick; Von Till, Bill
Subject: [External_Sender] Re: INFO: Notice of Violation and Proposed Imposition of Civil Penalty (\$14, 500) to Western Nuclear, Incorporated (EA-18-034)
Attachments: WNI Letter to NRC Re NOV - 12-27-19.pdf; Letter to L. Corte from G. Wilson - EA-18-034 WNI 12.19.2019.pdf

Re: In the matter of EA-18-034

Attached please find Western Nuclear's letter in response to the Notice dated December 19, 2019 received from G. Wilson, Director of Enforcement, which provides the Director, as well as NRC staff attending to this matter, notice of WNI's election to accept, without contest, the proposed NOV and to make arrangements to promptly pay the proposed civil penalty.

Respectfully Submitted;

Lawrence Corte
President

Western Nuclear Inc.
333 North Central Avenue
Phoenix, Arizona 85004

Office (602) 366-8094
Mobile (602) 512-5229
lcorte@fmi.com

From: Holiday, Sophie <Sophie.Holiday@nrc.gov>
Sent: Thursday, December 19, 2019 2:14 PM
To: Corte, Lawrence J. <lcorte@fmi.com>
Cc: Chris Pugsley <cpugsley@athompsonlaw.com>; Anthony Thompson <ajthompson@athompsonlaw.com>; Orlando, Dominick <Dominick.Orlando@nrc.gov>; Von Till, Bill <Bill.VonTill@nrc.gov>
Subject: INFO: Notice of Violation and Proposed Imposition of Civil Penalty (\$14,500) to Western Nuclear, Incorporated (EA-18-034)

Good Afternoon Mr. Corte et. al.:

As discussed in our phone call this afternoon, in the matter of EA-18-034, the NRC has determined that Western Nuclear, Incorporated (WNI) non-willfully violated NRC requirements. Specifically, the violation involved the submittal of information to the Commission that was not complete and accurate in all material respects pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 40.9(a). This violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III, which is considered an escalated enforcement action.

In accordance with Section 2.3.4 of the NRC Enforcement Policy, the NRC has to consider whether Corrective Action (CA) credit was warranted. The NRC determined that while the NRC addressed the underlying technical concerns by expanding the long-term care boundary and employed an alternate approach to

evaluating the migration of contaminants at the site, WNI did not address any CAs to ensure that information provided by WNI in the future would be accurate and complete. Therefore, the NRC determined that CA credit was not warranted.

Therefore, a Notice of Violation and a Proposed Imposition of Civil Penalty (Notice) in the base amount of \$14,500 (Enclosure 1) is being issued for the Severity Level III Violation.

Attached you will find an electronic copy of the NRC's letter to you, Mr. Corte, which include two enclosures. Enclosure 1 included the Notice. Enclosure 2 contains information on how to pay the civil penalty.

If you have any questions, feel free to contact me.

Thank you,

-*Sophie*

Sophie Holiday
Health Physicist
Enforcement Coordinator
NMSS/MSST/MSEB
Phone: (301) 415-7865
Office: TWFN-5D24
Mail Stop: TWFN-5B60

WESTERN NUCLEAR, INC.
2801 Youngfield, Suite 340
Golden, Colorado 80401

Lawrence J. Corte
President & General Manager

December 27, 2019

United States Nuclear Regulatory Commission
Office of the Executive Director for Operations
Office of Enforcement
Attn: Mr. George A. Wilson, Director
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Wilson:

Western Nuclear, Inc. (WNI), a former United States Nuclear Regulatory Commission (NRC) and current State of Wyoming Agreement State licensee, is in receipt a letter from the Director of Enforcement dated December 19, 2019, (attached) proposing a Notice of Violation (NOV) of NRC regulations at 10 CFR 40.9(a) for providing NRC Staff with allegedly inaccurate or incomplete information. NRC, through its Office of Enforcement, is proposing a civil penalty in the amount of \$14,500 to be paid by WNI unless otherwise contested. By this letter, WNI is informing the NRC that it will accept the NOV issued December 19, 2019 from the NRC alleging that a single non-willful violation occurred and that WNI will pay the civil penalty in accordance with NUREG/BR-0254 and shall submit to the Director, Office of Enforcement, a statement when, and by what method the civil penalty payment was made.

WNI respectfully requests that NRC Staff attending to this matter issue complete documentation of receipt of the civil penalty payment when processed by the agency, including a receipt, so that WNI may retain adequate records of final settlement of this NOV/citation. WNI also requests that NRC Staff attending to this matter provide a formal resolution document for the Administrative Record in this case officially closing out this matter, and to circulate such document(s) to both the State of Wyoming's Agreement State Program and all NRC's internal office staff so as to officially provide notice on the record to all stakeholders that the NRC Office of Enforcement proceedings on this matter are completed. Please provide this notification electronically as well as via United States Mail, so that this matter may be internally processed expeditiously. Thank you for your time and consideration in this matter.

Respectfully Submitted,



Lawrence J. Corte
President, Western Nuclear, Inc.



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

December 19, 2019

EA-18-034

Mr. Lawrence J. Corte
President and General Manager
Western Nuclear, Inc.
2801 Youngfield St., # 340
Golden, CO 80401

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$14,500 (U.S. NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS REPORT NO. 4-2016-015 AND NRC RECORDS REVIEW, WESTERN NUCLEAR, INCORPORATED)

Dear Mr. Corte:

This letter refers to the investigation initiated by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) on January 25, 2016, and associated records review. The purpose of the investigation was to determine whether Western Nuclear, Incorporated (WNI), based in Golden, Colorado, or its contractors, deliberately provided incomplete and inaccurate information concerning groundwater flow and contaminant transport models to the NRC concerning the WNI Split Rock site near Jeffrey City, Wyoming.

The results of the NRC investigation and details regarding the apparent violation were described in the letter the NRC issued to you on September 9, 2019 (EA-18-034), which included a summary of the investigation findings. In the September 9, 2019, letter, you were informed that the NRC was considering escalated enforcement action against WNI for an apparent violation, and you were offered a choice to provide a written response or to request a predecisional enforcement conference (PEC) with the NRC. You requested a PEC.

On October 22, 2019, a closed PEC was conducted with WNI (Mr. Christopher Pugsley on behalf of WNI) to discuss the apparent violation, its significance, its root causes, the potential willfulness of the violation, and your corrective actions. The PEC was closed to public observation because we discussed the findings of an OI report that has not been publicly disclosed.

Based on the information gathered during the investigation and records review, and statements from the PEC, including the information provided by Mr. Pugsley during and after the conference, the NRC has determined that a non-willful violation of NRC requirements has occurred. The violation involved the submittal of information to the Commission that was not complete and accurate in all material respects pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 40.9(a). This violation is cited in Enclosure 1, Notice of Violation and Proposed Imposition of Civil Penalty (Notice), and the circumstances surrounding it are described in detail in Enclosure 2 of the September 9, 2019, letter.

The NRC considers this violation to be significant because it impacted the NRC's ability to ensure adequate protection of public health and safety. The violation identified in the Notice has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The NRC Enforcement Policy may be found on the NRC website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

Because WNI has not previously been the subject of escalated enforcement action within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process described in Section 2.3.4 of the NRC Enforcement Policy. While WNI did take actions to expand the long-term care boundary and employ an alternate approach to evaluating the migration of contaminants at the site, which addressed the underlying technical concerns, it did not address any corrective actions to ensure that information provided by WNI in the future would be accurate and complete. Therefore, the NRC determined that *Corrective Action* credit was not warranted.

Therefore, to emphasize the importance of comprehensive correction of violations, a Notice in the base amount of \$14,500 is being issued for the Severity Level III violation. If, in the future, any applications are submitted under the name Western Nuclear, Inc. for NRC-licensed activities, you may be required to provide a detailed discussion of how the NRC would be confident that these issues would not recur.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice. Additionally, 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.

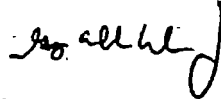
In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response, will be made available electronically for public inspection in the NRC Public Document Room and in the Agencywide Documents Access and Management System, accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its website at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

L. Corte

3

If you have any questions concerning this matter, please contact Ms. Sophie Holaday, Enforcement Coordinator, Office of Nuclear Material Safety and Safeguards, at (301) 415-7865.

Sincerely,



George A. Wilson, Director
Office of Enforcement

Docket Number: 040-01162

License Number: SUA-56

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254, Payment Methods

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY

Western Nuclear, Inc.
Golden, Colorado

Docket No.: 040-01162
License No.: SUA-56
EA-18-034

During an investigation initiated by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) on January 25, 2016, and associated records review, related to information submitted by Western Nuclear, Incorporated (WNI) to the NRC concerning the WNI Split Rock site near Jeffrey City, Wyoming, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, 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 Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 40.9(a) requires, in part, that information provided to the Commission by a licensee, or information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects.

Contrary to the above, in a report dated May 22, 2015, WNI submitted information to the Commission that was not complete and accurate in all material respects. Specifically, WNI submitted a technical report dated May 22, 2015, to the NRC that contained inaccurate and incomplete information. The purpose of the report was to compare predicted estimates provided in WNI's 2003 groundwater report for the Split Rock site to observed results. The May 2015 report provided that:

This memorandum addresses the groundwater system in the Northwest and Southwest Valleys as well as the Sweetwater River floodplain and the river system. Measured groundwater elevations, hydraulic gradients, groundwater quality and constituent loading to the Sweetwater River are compared to predicted estimates provided in the 1999 SGWCE and the 2003 Supplemental Groundwater Modeling Report for the Split Rock, Wyoming Site (MFG, 2003).

The May 2015 report concludes that "[t]he data plots show good agreement between predicted and measured water elevations." The report also contains a Table 4-1 that compares "Measured and Predicted Groundwater Flow Gradients and Velocities for the Southwest Valley," including both "measured" and "computed" values for dates ranging from 1988 through 2013. However, neither WNI nor its contractor (1) had access to a working version of the 2003 groundwater model, or (2) consulted data known to derive from the working version of the 2003 groundwater model, contrary to statements in the report.

The licensee contractor that drafted the May 2015 report, which senior WNI personnel also reviewed, represented that the model data evaluated in the May 2015 report were from the working version of the 2003 groundwater model. This material information was not accurate because, when the May 2015 report was prepared and submitted, neither WNI nor its contractor had the original model files used for this model.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.9).
Civil Penalty - \$14,500 (EA-18-034)

Enclosure 1

The NRC has concluded that information regarding the reason for the violation is already adequately addressed on the docket. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation. 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 Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with copies to the Document Control Desk, Washington, DC 20555-0001 and the Director, Office of Nuclear Material Safety and Safeguards, U.S., Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852-2738.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

WNI may pay the civil penalty proposed above, in accordance with NUREG/BR-0254 (Enclosure 2) and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, 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, within 30 days of the date of this Notice.

Should you fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should you 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; EA-18-034" 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 response should address the factors addressed in Section 2.3.4 of the NRC Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided 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 which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, 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, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with copies to the Document Control Desk, Washington, DC 20555-0001, and the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852-2738.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, the response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction.

If personal privacy, proprietary, or safeguards 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 19th day of December 2019.

QUESTIONS?

If you have questions, please visit <https://www.nrc.gov> and search for "License Fees."

Questions may also be directed to the NRC Accounts Receivable Help Desk by e-mail at nrc@fiscal.treasury.gov, by phone at (301) 415-7554, or by writing to the address below:

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T9-E10
Washington, DC 20555-0001



Payment Methods

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T9-E10
Washington, DC 20555-0001
PH (301) 415-7554



NUREG/BR-0254, Rev. 9
June 2019



Enclosure 2

APPROVED BY OMB: NO. 3150-0190

Estimated burden per response to comply with this voluntary collection request: 10 minutes. This brochure provides information about available payment methods. Forward comments about to burden estimate to the Records Management Branch (T6-F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0190), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

NRC accepts the methods described below.

PAYMENT BY AUTOMATED CLEARINGHOUSE

To pay by Automated Clearinghouse/Electronic Data Interchange (ACH/EDI), provide a copy of NRC Form 628 to your financial institution. You may obtain a copy of NRC Form 628 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 628." You can also obtain a form by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

PAYMENT BY CREDIT CARD

The NRC is currently accepts credit card payments of up to \$24,999.99. For payment by credit card, go to Pay.gov, search for "U.S. Nuclear Regulatory Commission Fees" and enter the required information.

You may also mail or fax NRC Form 629 following the directions on the form. To obtain a copy of NRC Form 629 go to <http://www.nrc.gov> and search for "NRC Form 629" or call the NRC Accounts Receivable Help Desk at (301) 415-7554.



PAYMENT BY FEDWIRE DEPOSIT SYSTEM

The NRC can receive funds through the U.S. Department of the Treasury (Treasury) Fedwire Deposit System. The basic wire message format below complies with the Federal Reserve Board's standard structured third-party format for all electronic funds transfer (EFT) messages.

See the sample EFT message to Treasury below. Each numbered field is described below.

The diagram shows a structured EFT message format with numbered fields 1 through 10. The fields are: 1. TO (021030004), 2. FROM (ORDERING BANK AND RELATED DATA), 3. REF (TREAS NYC/CTR), 4. REF (BNF=/AC-31000001 OBI=), 5. AMOUNT (\$), 6. SENDER-DFI-NAME, 7. RECEIVER-DFI-NAME, 8. PRODUCT CODE, 9. AGENCY LOCATION CODE (ALC), and 10. THIRD-PARTY INFORMATION (OBI=).

1 RECEIVER-DFI# – Treasury's ABA number for deposit messages is 021030004.

2 TYPE-SUBTYPE-CD – The sending bank will provide the type and subtype code.

3 SENDER-DFI# – The sending bank will provide this number.

4 SENDER-REF# – The sending bank will insert this 16-character reference number at its discretion.

5 AMOUNT – The transfer amount must be punctuated with commas and decimal point; use of the "\$" is optional. The depositor will provide this item.

6 SENDER-DFI-NAME – The Federal Reserve Bank will automatically insert this information.

7 RECEIVER-DFI-NAME – Treasury's name for deposit messages is "TREAS NYC". The sending bank will enter this name.

8 PRODUCT CODE – A product code of "CTR" for customer transfer should be the first item in the receiver text field. Other values may be entered, if appropriate, using the ABA's options. A slash must be entered after the product code.

9 AGENCY LOCATION CODE (ALC) – THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be on one line and cannot contain any spaces. The NRC's 8-digit ALC is: BNF=/AC-31000001

10 THIRD-PARTY INFORMATION – The Originator to Beneficiary Information (OBI) field tag "OBI=" signifies the beginning of the free-form third-party text. All other identifying information intended to enable the NRC to identify the deposit—for example, NRC annual fee invoice number, description of fee, 10 CFR 171 annual fee, and licensee name—should be placed in this field.

The optimum format for fields 7, 8, 9, and 10 using an 8-digit ALC is as follows:

TREAS NYC/CTR/BNF=/AC-31000001 OBI=

The optimum format, shown above, will allow 219 character positions of information following the "OBI=" indicator.

If the licensee's bank is not a member of the Federal Reserve System, the nonmember bank must transfer the necessary information and funds to a member bank, which then must transfer the information and funds to the local Federal Reserve Bank.

For a transfer of funds from local Federal Reserve Banks to be recorded on the same day, the transfer must be received at the New York Federal Reserve Bank by 4 p.m., EST. Otherwise, the deposit will be recorded on the next workday.

PAYMENT BY CHECK

Checks should be made payable to the U.S. Nuclear Regulatory Commission with the invoice number, Enforcement Action number, or other information that identifies the payment, written on the check. Mail the check to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank
P.O. Box 979051
St. Louis, MO 63197-9000

FedEx or overnight mailings must be delivered to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank Government Lockbox
SL-MO-C2GL
1005 Convention Plaza
St. Louis, MO 63101

TAXPAYER IDENTIFICATION NUMBER

You must file your Taxpayer Identification Number (TIN) with the NRC. Use NRC Form 531 to provide your TIN. You may obtain NRC Form 531 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 531" or by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.