

October 2, 1996

EA 96-314

Anderson Columbia Construction, Inc.
ATTN: Mr. T. H. McRae
President
Post Office Box 1386
Lake City, Florida 32056-1386

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 999-90002/96-04)

Dear Mr. McRae:

This refers to the inspection conducted on August 8, 1996, at Plant No. 5 in Bagdad, Florida. The purpose of the inspection was to review the facts and circumstances surrounding your use of byproduct material at Eglin Air Force Base, Florida without an NRC license. The results of the inspection were formally transmitted to you by letter dated September 4, 1996. That letter also provided you the opportunity to respond to the apparent violation or request a predecisional enforcement conference. In letters dated September 6 and 10, 1996, you declined to participate in a predecisional enforcement conference, admitted the apparent violation, and submitted a response to the NRC which included an explanation of the root cause of the apparent violation and your corrective actions to preclude recurrence, as requested in our letter dated September 4, 1996. 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 written response, 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 describe in detail in the subject inspection report. The violation involved Anderson Columbia Construction, Inc.'s use of a moisture density gauge at locations within NRC's jurisdiction without first obtaining a specific or general NRC license, in accordance with 10 CFR 30.3. Specifically, in June 1996, you took possession of a moisture density gauge from Okaloosa Asphalt, Inc. and used it to perform testing activities at the Eglin Air Force Base in areas of exclusive Federal jurisdiction. At the time you possessed and used the gauge, you did not possess an NRC specific or general license. In addition, although not directly related to the violation, you also did not possess a radioactive materials license from the State of Florida at the time you performed the work at Eglin Air Force Base; however, the individual who used the gauge was appropriately trained and appeared to have conducted the operations safely. The NRC has concluded that based on the information available the failure to obtain the appropriate license was not intentional on the part of Anderson Columbia Construction, Inc., and your staff was unaware of the licensing requirements in this regard.

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This violation is of significant regulatory concern because it denied the NRC an opportunity to inspect Anderson Columbia Construction, Inc.'s use of by-product material in areas of exclusive Federal jurisdiction, thereby impeding the NRC's ability to perform its statutory responsibility of verifying that by-product material is used in accordance with NRC requirements. The NRC relies on licensees and their employees to fully understand and comply with NRC requirements prior to performing licensed activities. Therefore, this violation 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 \$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 or 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. In your September 6, 1996, response, you stated that your corrective actions included: (1) application for and receipt of a State of Florida Radioactive Materials license (No. 2708-1); (2) submission of a request for the appropriate forms to apply for NRC reciprocity in the State of Florida from NRC Region II; (3) informing all management and supervisory personnel within Anderson Columbia Construction, Inc. of the violation and the proper steps to avoid recurrence; and (4) directing your Radiation Safety Officer (RSO) to contact the appropriate Federal RSO in the event that future work is performed on a military base or other Federal property. In addition, on September 9, 1996, you filed the appropriate forms with the NRC and paid the fee for conducting further licensed activities in areas of exclusive Federal jurisdiction. Based on the above, the NRC determined that your corrective actions were prompt and comprehensive and credit was warranted for this factor.

Therefore, to encourage prompt 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. Notwithstanding this decision, we would expect that, in the future, Anderson Columbia Construction, Inc. would obtain written assessments from, or document assessments by, Federal authorities as to whether a proposed work site is in an area of exclusive Federal jurisdiction. Absent such documentation showing that Federal authorities assessed the work site as not being in an area of exclusive Federal jurisdiction, additional enforcement action including assessment of a civil penalty may be taken for failure to seek the required authorization to perform licensed activities in areas of exclusive Federal jurisdiction.

Please note that the violation described in the enclosed Notice does not address work performed at Hurlburt Field. Inclusion of this worksite as part of the apparent violation described in our September 4, 1996, letter to you was in error. Particularly, you did not perform licensed activities at the facility, and Hurlburt Field is not an area of exclusive Federal jurisdiction.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent

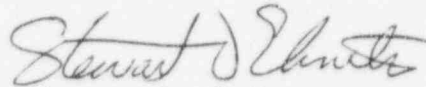
Anderson Columbia
Construction, Inc.

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recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in your letter dated September 6, 1996. 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 any response you may choose to provide will be placed in the NRC Public Document Room (PDR).

Sincerely,



Stewart D. Ebnetter
Regional Administrator

Docket No. 999-90002

Enclosure: Notice of Violation

cc w/encl: State of Florida

Anderson Columbia
Construction, Inc.

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