

September 25, 1996

EA 96-308

Nelson Excavating, Inc.  
ATTN: Mr. James C. Nelson, Owner  
Euclid Avenue Addition  
Thomas, West Virginia 26292

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE AND  
NRC INSPECTION REPORT NO. 47-24923-02/96-02

Dear Mr. Nelson:

This refers to the inspection conducted on August 14 - 15, 1996, at Thomas, West Virginia. The purpose of the inspection was to determine the status of your licensed activities and response to a Demand For Information issued on June 11, 1996. The findings of the inspection were discussed with you in general on August 15, 1996 by Mr. David Collins. You have been unresponsive to several attempts by Mr. John Potter, Chief Materials Licensing/Inspection Branch 2 to contact you by telephone to inform you of the results of the inspection and to schedule a predecisional enforcement conference. The findings and conclusions from this inspection are contained in the enclosed report and were reviewed with your office Manager.

Areas examined during the inspection are identified in the report. Within these areas, the inspection consisted of selective examinations of procedures and representative records, interviews with personnel, and observation of activities in progress.

Based on the results of this inspection, five apparent violations of NRC regulations, your license, an Order and Demand for Information were identified. These apparent violations are being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. Since they are being considered, no Notice of Violation is presently being issued for these inspection findings. In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review.

The NRC requests that you attend a predecisional enforcement conference prior to our making a final enforcement decision in this case. The purposes of this conference are to discuss the apparent violations, their causes and safety significance, and to provide an opportunity for you to present your proposed corrective actions. In addition, this is an opportunity to provide any additional information concerning your perspective on 1) the severity of the violations, 2) the application of the factors the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance

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with Section VI.B.2 of the Enforcement Policy, and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII. The decision to hold an enforcement conference does not mean that enforcement action will be taken.

Please advise this office, in writing, within 10 days of your receipt of this letter whether Nelson Excavating, Inc., or Mr. James C. Nelson intend to participate in a predecisional enforcement conference. Should you decline to participate in an enforcement conference, the NRC will pursue enforcement action based on information obtained during the inspection and other information available to the staff. The licensee and the individual will be advised by separate correspondence of the results of our deliberations on this matter. Upon receipt of your reply, we will contact you to make the necessary arrangements.

Enclosed for your information (Enclosure 2) is a copy of the current NRC Enforcement Policy. Your attention is directed to Section V, which explains the purpose of predecisional enforcement conferences, and Section VIII, which explains enforcement actions involving individuals. In addition to the enforcement sanctions for licensees, please note that the enforcement sanctions that could be assessed against an individual include a Letter of Reprimand, a Notice of Violation and/or an Order prohibiting or restricting involvement in NRC licensed activities.

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.

If you have any questions, please contact Mr. John P. Potter, Chief, Materials Licensing/Inspection Branch 2 at 404/331-5571.

Sincerely,

(original signed by  
B. S. Mallett)

Bruce S. Mallett, Director  
Division of Nuclear Materials Safety

Docket No. 030-32882  
License No. 47-24923-02

Enclosures:

1. NRC Inspection Report
2. Enforcement Policy

cc w/encls:  
State of West Virginia

Distribution w/o encl 2: (See Page 3)

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Enforcement Coordinators

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(\*) See next page or previous concurrence

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SIGNATURE			<i>BSM</i>			
NAME	DJCollins *	JPPotter★	BSMallett	CEvans	BUryc	
DATE	09 / / 96	09 / / 96	09 / 25 / 96	09 / / 96	09 / / 96	09 / / 96
COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

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OFFICE	RII DNMS	RII DNMS	RII DNMS	RII DRA	RII DRA	RII EICS
SIGNATURE	<i>D Collins</i>	<i>J Potter</i>				
NAME	DCollins	JPotter	BSMallett	CEvans		BUryc
DATE	09 / 19 / 96	09 / 19 / 96	09 / / 96	09 / / 96	09 / / 96	09 / / 96
COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

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