

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

GCME, Inc.
DePere, Wisconsin

Docket No. 030-31195
License No. 48-23409-01
EA 96-256

During an NRC inspection conducted from June 27 to July 22, 1996, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600 (60 FR 34381; June 30, 1995), 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. Condition 18 of NRC Materials License No. 48-23409-01, requires that licensed material be possessed and used in accordance with the statements, representations and procedures contained in an application dated August 7, 1995, and the enclosure to the application.

Item 10.1 of the enclosure to the application, "Radiation Safety Program: Personnel Monitoring Program," requires, in part, that all gauge users be monitored with a film badge.

Contrary to the above, on June 27, 1996, a gauge user was not monitored with a film badge while using a moisture/density gauge containing NRC-licensed material (nominally 10 millicuries (0.37 GBq) of cesium-137 and nominally 50 millicuries (1.9 GBq) of americium-241). (01013)

(This is a repeat violation.)

- B. 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 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, the licensee did not secure from unauthorized removal or limit access to moisture/density gauges containing NRC-licensed material (nominally 10 millicuries (0.37 GBq) of cesium-137 and nominally 40-50 millicuries (1.9 GBq) of americium-241) located in unrestricted areas and that were not in storage, nor did the licensee control and maintain constant surveillance of this licensed material. Specifically,

1. On June 27, 1996, a gauge technician returned to the licensee's facility, parked the truck in the licensee's front parking lot, an unrestricted area, and entered the licensee's office. A gauge

containing NRC-licensed material was in the rear of the truck, the gauge was not secured within the truck, the rear hatch of the pickup truck was missing, and the technician did not maintain constant surveillance of the gauge containing licensed material.

2. As of the August 29, 1996 predecisional enforcement conference, the licensee's Radiation Protection Officer stated that he routinely left gauges unattended or uncontrolled at various temporary job sites. As a regular practice, he would walk away from a gauge that was not secured, often with his back to the device, in order to perform other tasks; therefore, the gauge containing NRC-licensed material was not controlled or under constant surveillance. (01023)

- C. Condition 11.A. of NRC Materials License No. 48-23409-01 requires, in part, that licensed material shall be used by, or under the supervision and in the physical presence of, individuals who have successfully completed the device manufacturer's training program for gauge users, and have been designated by the licensee's Radiation Protection Officer.

Contrary to the above, on June 27, 1996, a Campbell Pacific Nuclear moisture/density gauge containing NRC-licensed material (nominally 10 millicuries (0.37 GBq) of cesium-137 and nominally 50 millicuries (1.9 GBq) of americium-241) was used by an individual who had not successfully completed the device manufacturer's training program for gauge users and who had not been under the supervision and in the physical presence of an individual who had successfully completed the device manufacturer's training program. Furthermore, the individual had not been designated by the licensee's Radiation Protection Officer to use licensed material. (01033)

- D. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of 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.

1. 49 CFR 177.842 requires, in part, that packages of radioactive materials be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on June 27, 1996, the licensee transported a package containing nominally 10 millicuries (0.37 GBq) of cesium-137 and nominally 50 millicuries (1.9 GBq) of americium-241 outside the confines of its plant, and the package was not blocked and braced such that it could not change position during conditions normally incident to transportation. Specifically, a gauge user did not use the equipment provided by the licensee to block and brace the moisture/density gauge during transport. (01043)

2. 49 CFR 173.475(a) requires, in part, that before each shipment of any radioactive materials package, the shipper shall ensure by examination or appropriate tests, that the packaging is proper for the contents to be shipped.

Contrary to the above, on June 27, 1996, the licensee offered for transportation nominally 10 millicuries (0.37 GBq) of cesium-137 and nominally 40 millicuries (1.5 GBq) of americium-241 (special form) and the licensee did not ensure by examination or appropriate tests, that the packaging was proper for the contents to be shipped. Specifically, a gauge user did not transport the moisture/density gauge in a Type A transport container in that the gauge was not transported in its transport container. (01053)

This is a Severity Level III problem (Supplements IV, V, and VI).
Civil Penalty - \$5,000

Pursuant to the provisions of 10 CFR 2.201, GCME 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 ~~may~~ 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 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: Mr. 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 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 4th day of October 1996