

October 24, 1996

EA 96-248

Mr. William Switzer
District Director
Indiana Department of Transportation
Crawfordsville District
P.O. Box 667
Crawfordsville, IN 47933

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$2,500 (NRC INSPECTION REPORT NO. 030-32466/95001(DNMS) AND
OI INVESTIGATION REPORT NO 3-95-036)

Dear Mr. Switzer:

This refers to the NRC inspection completed on August 2, 1996, and to the investigation conducted by the NRC Office of Investigations (OI) at the Indiana Department of Transportation (INDOT) facility, Crawfordsville, Indiana. The inspection report was sent to you on August 19, 1996. A copy of the synopsis of the OI investigation was included with the inspection report. On September 4, 1996, a transcribed enforcement conference was held with Mr. D. Carpenter and other members of INDOT staff to discuss the violations, their causes, and proposed corrective actions.

During the OI investigation and the transcribed predecisional enforcement conference, an INDOT project engineer told the NRC that he felt he was unfairly constrained by the inability to have part time employees trained before using moisture density gauges. The Radiation Safety Officer (RSO) explained at the predecisional enforcement conference that after a request from the project engineer to train a part time employee, he told the project engineer that training could not be provided, and that a thermoluminescent dosimeter would not be assigned until training was completed. However, based on production pressure, the project engineer deliberately assigned both his badge and a nuclear moisture density gauge to an unauthorized, untrained individual.

Based on the inspection and the OI investigation, and the information presented during the enforcement conference, the NRC has determined that two violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty and the circumstances surrounding them are described in detail in the subject inspection report.

Violation A involved an INDOT project engineer who deliberately violated NRC regulations by allowing an unauthorized trainee to use a moisture density gauge for approximately 4 months without completing the requisite training and without being designated as an authorized user by the RSO. Violation B involved another deliberate violation by the project engineer when he assigned

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his thermoluminescent dosimeter (TLD) to the same unauthorized trainee he allowed to use the moisture density gauge.

These deliberate violations are of significant regulatory concern because they were caused by an INDOT project engineer who holds a supervisory position and who was knowledgeable of INDOT's NRC-licensed procedures regarding the use of nuclear gauges. While the safety consequence of the violations was somewhat mitigated by the fact that the project engineer did provide some training and a TLD badge to the unauthorized trainee, the violations nonetheless are significant because they resulted, in part, from a lack of management support in providing the necessary resources to conduct licensed activities.

Incumbent upon each entity licensed by the NRC to use byproduct material is the responsibility to protect public health and safety, including its employees, by ensuring that the rules, regulations and license conditions are followed at all times. These violations would normally be classified as Severity Level IV violations in accordance with the enforcement policy. However, because the violations were willful, the violations are classified in the aggregate in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III problem. Because the violations were deliberate the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit was not given for *Identification* because the NRC identified the violations. Your corrective actions included: (1) corporate wide training, including a discussion of management expectations regarding gauge use and the unacceptability of violating NRC requirements; (2) commitment to recertify all gauge users annually; and (3) development of a nuclear gauge manual for all gauge users. Further, it is our understanding that you have informed your employees that, notwithstanding production pressure, they are not to conduct licensed activities if all NRC requirements are not met. Therefore, credit was given for your prompt and comprehensive *Corrective Actions*.

Therefore, to emphasize the importance of compliance with NRC regulations and licensee commitments and to ensure prompt identification of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$2,500 for the Severity Level III problem.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In preparing your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, in your response please confirm our understanding concerning your policy of compliance over production pressure. After reviewing your response to the Notice, including your proposed corrective actions, the NRC will determine whether

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further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 pCFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personnel privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,

/s/ W. L. Axelson (for)

A. Bill Beach
Regional Administrator

Docket No. 030-32466
License No. 13-26344-01

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty

DOCUMENT NAME: INDOTFNL.PKG

RII:DNMS E	RII:DNMS E	RII:ECIS B	RII:RAO B	RII:RAO B
Adara	Pederson	Burgess	Berson	Beach
10/21/96	10/21/96	10/21/96	10/21/96	10/24/96

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