

October 23, 1996

EA 96-315

Pensacola Testing Laboratories, Inc.
ATTN: Mr. Patrick A. Wheeler
President/Radiation Safety Officer
217 East Brent Lane
Pensacola, Florida 32503

SUBJECT: NOTICE OF VIOLATION
(NRC Special Inspection Report No. 150-00009/96-05)

Dear Mr. Wheeler:

This refers to the inspection conducted on August 5, 1996, at your Pensacola, Florida facility. The inspection included a review of the facts and circumstances surrounding your use of moisture density gauges containing by-product material at Eglin Air Force Base, Whiting Field, Hurlburt Field, and Pensacola Naval Air Station, Florida. 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. On September 12, 1996, you declined the opportunity for a predecisional enforcement conference, and on October 3, 1996, you provided a written response which admitted the apparent violation, and 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 described in detail in the subject inspection report. The violation involved Pensacola Testing Laboratories, Inc.'s use of moisture density gauges at locations within NRC's jurisdiction without first obtaining a specific NRC license or filing NRC Form-241, "Report of Proposed Activities in Non-Agreement States." 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 in that Hurlburt Field does not include areas of exclusive Federal jurisdiction.

This violation is of significant regulatory concern because it denied the NRC an opportunity to inspect Pensacola Testing Laboratories, 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. You

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attributed the failure to an honest oversight, in that although you were aware of the NRC reciprocity requirements and had filed appropriately for work involving your radiographic source, you inadvertently failed to file for reciprocity for your moisture density gauge work. The NRC accepts this explanation; however, 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 October 3, 1996, response, your corrective actions included promptly filing for reciprocity with NRC Region II to cover moisture density gauge use, payment of the associated fees, and periodic notification of work to be performed in areas of NRC 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, Pensacola Testing Laboratories, 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.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in your letter dated October 3, 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.

Pensacola Testing
Laboratories, Inc.

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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,

Original Signed by L. A. Reyes

Stewart D. Ebnetter
Regional Administrator

Docket No. 150-00009

Enclosure: Notice of Violation

cc w/encl: State of Florida