

DCD

October 28, 1996

Thomas C. Bordine  
Licensing Manager  
Consumers Power Company  
27780 Blue Star Highway  
Covert, MI 49043

SUBJECT: NOTICE OF VIOLATION DATED AUGUST 15, 1996

Dear Mr. Bordine:

This refers to your letter dated September 27, 1996, in response to our letter dated August 15, 1996, transmitting a Notice of Violation (NOV). Our August 15, 1996, NOV contained two violations. The first violation was for the failure to properly prepare a package containing radioactive material, in the form of a slab of depleted uranium, for transport. The second violation addressed the unauthorized removal of a sealed source from a Williston Elin Model 2001PC thermoluminescent dosimeter (TLD) irradiator.

In your September 27, 1996, response to the NOV, you agreed with the first violation, but noted some factual errors in the written description of the violation. In summary, you noted that the quantity of uranium-235 in the depleted uranium slab was not pertinent to the failure to properly prepare the package for shipment. We concur with that observation and your note that the package could have been shipped as an excepted package of natural or depleted uranium, in accordance with 49 CFR 173.424. It appears that the only requirement that Consumers Power did not meet for the shipment of the depleted uranium slab was the inclusion of the necessary statement contained in 49 CFR 173.421-1. You also noted that the slab was shipped on March 27, 1996, rather than February 27, 1996, as referenced in the NOV. We concur with that correction. Our inspection report noted the correct date; however, we inadvertently included an incorrect date in our August 15, 1996 NOV.

With regard to the second violation, you disagreed with the violation and requested that it be withdrawn. In your response, you stated that you believed the outer source encapsulation to be the source holder, rather than the TLD irradiator source housing. We direct your attention to the safety evaluation for the sealed source contained in the TLD irradiator, the Amersham Corporation Model CDC.711M Series sealed source. The evaluation can be found in the Registry of Radioactive Sealed Sources and Devices, Registration No. NR-136-S-232-S. A copy of the registration is enclosed with this letter. The completed sealed source is shown in the diagram contained in Attachment 1 of the registration. From that diagram, and the physical description in the registration, we note that the sealed source is comprised of the radioactive material, an inner cell body or primary encapsulation, and an outer sheath body or secondary encapsulation. Therefore, neither the inner or outer encapsulations can be considered the source holder, as each of those components comprise the sealed source itself.

9610310252 961028  
PDR ADDCK 03013132  
C PDR

1/1  
IE07

Furthermore, you provided an interpretation of Condition 13 of your license, which was the subject of the violation. That Condition states, "(s)ealed sources or detector cells containing licensed material shall not be opened or sources removed from the source holders by the licensee." Your interpretation of this condition appears to indicate that you believe that only one of the three prohibitions contained in the condition could apply to a given situation. In actuality, any of the three could apply; however, since you do not possess detector cells containing licensed material, the prohibition regarding those devices does not apply to your activities in this case. The other two prohibitions do apply. Specifically, Condition 13 of your license prohibits you from opening sealed sources of licensed material and it prohibits you from removing sealed sources of licensed material from the source holders. If you performed either of the activities prohibited, then you would violate the Condition.

In your response, you also stated that the TLD irradiator was not intended to be the source holder and you stated that you did not believe that a source holder existed in this application. For each device containing a sealed source, the NRC generally applies the term "source holder" to that portion of the device in which the source rests, is affixed, or is housed. Therefore, in this instance, the source holder would be the inner, shielded chamber of the irradiator where the sealed source was housed.

Lastly, in your response, you contend that the radiation safety officer, Mr. Michael Mennucci, contacted the NRC Region III on-call Materials License Reviewer on March 9, 1996, in order to discuss the removal of the source and the transfer of the irradiator to Detroit Edison. The reviewer, Charles Gill, Ph.D., recalled that the telephone call occurred on March 6, 1996. Further, Dr. Gill recalled that he informed Mr. Mennucci that as long as the source was not removed from the source holder, the activity would likely be authorized, but that Mr. Mennucci should ensure that he complied with the license requirements. We note that the telephone conversation took place approximately three weeks after the source had been removed from the irradiator, and therefore, could not be used as a mitigative argument on your behalf. Finally, it appears that although Dr. Gill gave Mr. Mennucci correct information, Consumers Power erroneously believed that the outer source capsule constituted the source holder, which, as we have stated above, is not the case.

In summary, we have noted the factual errors addressed in Violation 1 of our August 15, 1996 inspection report and Notice of Violation. Those errors notwithstanding, the Violation remains valid. With regard to Violation 2, we have reviewed your request for withdrawal of the violation and have determined that you failed to provide any new evidence to support your request or to demonstrate error on our part. It appears that although Consumers Power's actions in removing the sealed source from the irradiator were completed safely, they were based on your organization's erroneous interpretation of your license conditions, and were contrary to the conditions of your license and constitute a violation of said conditions.

T. Bordine

-3-

Since Consumers Power no longer possesses licensed material under this NRC license, no further corrective actions appear warranted, and, as such, we consider this matter closed.

Sincerely,

Original Signed by Roy J. Canlano

Cynthia D. Pederson, Director  
Division of Nuclear Materials Safety

Docket No. 030-13132  
License No. 21-08606-07

Enclosure: As stated

DOCUMENT NAME: R:\LTRS2LIC\MTLS\030\96313132.L01

To receive a copy of this document, indicate in the box: "C" = Copy without enclosure "E" = Copy with enclosure "N" = No copy

OFFICE	RIII	<input checked="" type="checkbox"/> C	RIII	<input checked="" type="checkbox"/> E	RIII	<input checked="" type="checkbox"/> E	RIII	<input checked="" type="checkbox"/>
NAME	CAMERON:dp <i>dp</i>		PHILLIPS <i>PHILLIPS</i>		BURGESS <i>BURGESS</i>		PEDERSON <i>YCP</i>	
DATE	10/24/96		10/24/96		10/24/96		10/24/96	

OFFICIAL RECORD COPY