



FORT MYER CONSTRUCTION CORPORATION

2237 33rd Street, NE • Washington, DC 20018-1594 • (202) 636-9535 • FAX (202) 526-8572

September 6, 1996

Mr. Francis M. Costello, Chief
Nuclear Materials Safety Branch 3
Division of Nuclear Materials Safety
475 Allendale Road - Region I
King of Prussia, PA 19406

Re: Docket No. 030-34012
License No 08-30263-01
Inspection No. 30-34012/96-001

Dear Mr. Costello:

This letter is in response to your Notice of Violation letter received August 28, 1996 by Fort Myer Construction Corporation referencing the inspection by Mr. Steven R. Courtemanche which was conducted on August 14, 1996.

Based on our records for our employees who either use or transport our Troxler Model 4640 Portable gauge containing 8 millicuries of Cesium-137 (a radioactive material) we find that each has received the training that is required by 49 CFR 172.101 and has received training in the past two years as mandated by Subpart H. A copy of the training record of Michael Schneider, P.E., who was the individual questioned by Mr. Courtemanche on August 14, 1996 is enclosed. (See Exhibit 1).

Based on the data, I believe that the A.1 and A.2 items in the Notice of Violation are without merit and should be dismissed with prejudice against the excellent record of compliance by Fort Myer Construction Corporation. Yet, in order to attain our goal to satisfy all applicable training issues, I held additional classes for all potential users and transporters of the Troxler Model 4640B. (See Exhibit 2).

At this time we answer item B of the Notice of Violation, which states that Fort Myer Construction Corporation failed to comply with condition 12.A of our license 08-30263-01, by stating that we disagree with the finding made by Mr. Courtemanche during his inspection. It is important to note that our present Troxler gauge model 4640 B was transferred to our FMCC ownership on March 22, 1996, thereby making the six month leak test scheduled to be due on or before September 22, 1996. A copy of our gauge certificate is enclosed for your review. (See Exhibit 3).

SEP 13 1996

9611080071 960906
PDR ADOCK 03034012
C PDR

Mr. Courtemanche did inspect the Troxler model 3241C, a sealed source containing 100 millicuries of Americum - 241, which is licensed and is the property of the District of Columbia Department of Public Works. The Radiation Safety Officer for the District of Columbia is Mr. Johannes Waalidjke. On April 20, 1996 Mr. Waalidjke informed me that the Troxler gauge Model 3231-C SN #1895 was going to be transferred to the Fort Myer Construction Corporation lab at 2001 5th Street, N.E. so that their Washington, D.C. Asphalt lab technicians could conduct asphalt liquid content tests. Unfortunately, I had erroneously assumed that Mr. Waalidjke would be responsible to ensure compliance with the provision of their NRC license.

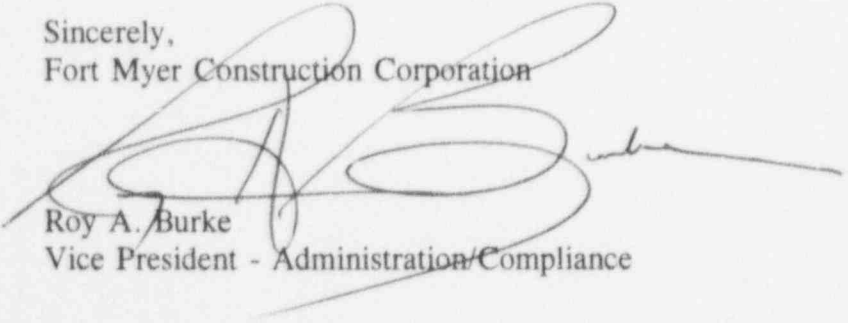
Although the leak test on the Troxler model 4640 B was not due until September 22, 1996, I moved the date forward and completed a leak test on both the Troxler model 4640 B and the Troxler model 3241C on August 19, 1996. A copy of the results are enclosed for your review. (See Exhibit 4).

In the future, as the registered nuclear safety officer for Fort Myer Construction Corporation, any type of "licensed" sealed source which is regulated by the Nuclear Regulatory Commission or any other governmental agency shall be handled as if they are under Fort Myer Construction Corporation's license and will be controlled in accordance with all applicable rules, regulations and laws.

I trust that I have successfully defended our position and hope that upon your review of the submitted documents that the Nuclear Regulatory Commission will not sustain the allegation of the violations contained in items A.1, A.2 and B which generated the Notice of Violations.

If I can assist in providing additional information, please do not hesitate to contact me at Fort Myer Construction Corporation (202) 636-9535.

Sincerely,
Fort Myer Construction Corporation



Roy A. Burke
Vice President - Administration/Compliance

cc: Document Control Desk
Washington, D.C. 20555

Regional Administrator
475 Allendale Road - Region I
King of Prussia, PA 19406

Mr. Johannes Waalidjk
Radiation Safety Officer
District of Columbia
Dept. of Public Works
4901 Sheperd Parkway, S.W.
Washington, D.C. 20032

Enclosure: Copy of your letter received Aug. 28, 1996
Certification of Michael Schneider, P.E.
Copy of gauge certificate for Troxler model 4640B
Copy of leak test conducted 8/19/96

c:\wp51\FortMyer\Costello.ltr

Exhibit #1

TROXLER ELECTRONIC LABORATORIES, INC.

HEREBY CERTIFIES THAT

MICHAEL A. SCHNEIDER

of

A.H. SMITH ASPHALT

HAS SUCCESSFULLY COMPLETED THE TROXLER ELECTRONIC LABORATORIES, INC.
TRAINING COURSE FOR THE USE OF NUCLEAR TESTING EQUIPMENT.

SUBJECTS INCLUDED IN THIS COURSE WERE AS FOLLOWS:

Radiological Safety

1. Principles and practices of radiation protection.
2. Leak testing procedures.
3. Mathematics and calculations basic to the use and measurement of radioactivity.
4. Biological effects of radiation.
5. Radioactivity measurement standardization and monitoring techniques and instruments.
6. Accident and incident procedures.
7. Procedures for nuclear gauge storage and transportation.
8. General safety precautions.

Gauge Operation

1. Instrument theory
2. Operating procedures
3. Maintenance
4. Field application
5. Gauge calibration


INSTRUCTOR

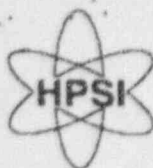
05/14/87

DATE

№ 17884

W.F. Troxler

PRESIDENT



HPSI Corp and Affiliated Companies

1350 Piccard Drive, Suite 121, Rockville, MD 20850

Fax (301) 670-9280

(301) 670-1818

(800) 969-4774

October 22, 1992

DOCUMENTATION OF TRAINING

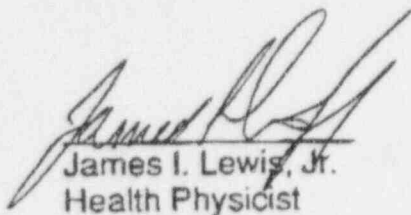
On October 16, 1992, the undersigned conducted one hour training sessions for the staff members at A.H. Smith in Branchville, Maryland.

The specific topic of discussion was Basic Radiation Safety.

Michael A. Schneider

Please retain a copy of this document in your permanent training records for possible regulatory agency review.

HEALTH PHYSICS SERVICES, INC.



James I. Lewis, Jr.
Health Physicist

JL/ba

**HPSI Corp and Affiliated Companies**

1350 Piccard Drive, Suite 121, Rockville, MD 20850

Fax (301) 670-9280

(301) 670-1818

(800) 969-4774

Exhibit - 3

October 14, 1993

DOCUMENTATION OF TRAINING

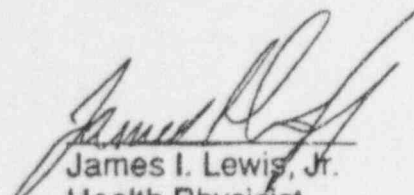
On October 4, 1993, the undersigned conducted one hour training sessions for the staff members at A.H. Smith in Branchville, Maryland.

The specific topic of discussion was Basic Radiation Safety.

John McConnel
Michael A. Schneider

Please retain a copy of this document in your permanent training records for possible regulatory agency review.

HEALTH PHYSICS SERVICES, INC.


James I. Lewis, Jr.
Health Physicist

JL/ba

**HPSI Corp and Affiliated Companies**

1350 Piccard Drive, Suite 121; Rockville, MD 20850

Fax (301) 670-9280

(301) 670-1818

(800) 969-4774

Exhibit - 4

September 26, 1994

DOCUMENTATION OF TRAINING

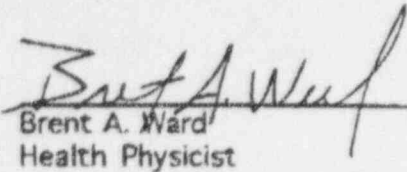
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The specific topic of discussion was Basic Radiation Safety.

John McConnel
Michael A. Schneider

Please retain a copy of this document in your permanent training records for possible regulatory agency review.

HEALTH PHYSICS SERVICES, INC.


Brent A. Ward
Health Physicist

**HPSI Corp and Affiliated Companies**

1350 Piccard Drive, Suite 121, Rockville, MD 20850

Fax (301) 670-9280

(301) 670-1818

(800) 969-4774

Exhibit-5

DOCUMENTATION OF TRAINING

On October 6, 1995, the undersigned conducted one hour training sessions for the staff members at A.H. Smith in Branchville, Maryland.

The specific topic of discussion was Basic Radiation Safety.

Michael A. Schneider

Please retain a copy of this document in your permanent training records for possible regulatory agency review.

HEALTH PHYSICS SERVICES, INC.

Brent A. Ward
Health Physicist

/sb

TROXLER ELECTRONIC LABORATORIES, INC.
GAUGE CERTIFICATE
ORIGINAL

TRANSFERRED ON: 22 MARCH, 1996
SALES ORDER NUMBER: 9610142

FROM

32-182-1

TROXLER ELECT. LABORATORIES, INC.
P O BOX 12057
RESEARCH TRIANGLE PARK, NC 27709

WASHINGTON, DC 20018

SEALED SOURCE

SEALED SOURCE

RADIOACTIVE MATERIAL
SOURCE SERIAL NUMBER
ACTIVITY
DATE OF MEASUREMENT
TROXLER DRAWING NUMBER
SPECIAL FORM CERTIFICATE
ANST SPECIFICATION
****DATE OF LEAK TEST****

RETAIN THIS DOCUMENT IN YOUR GAUGE RECORDS AS A RECORD OF RECEIPT.
PLEASE NOTE THAT THIS INFORMATION IS PROVIDED TO ASSIST IN COMPLIANCE OF
APPLICABLE RULES AND REGULATIONS AND MIGHT NOT ALWAYS BE COMPLETE AND/OR
CURRENT. ALWAYS CONSULT YOUR LICENSING AGENCY IF YOU HAVE ANY QUESTIONS
REGARDING THE AUTHORIZED POSSESSION, USE, OR TRANSPORTATION OF THIS GAUGE.
A COPY OF EACH APPLICABLE SPECIAL FORM CERTIFICATE AND US DOT 7A TYPE "A"
PACKAGE TESTING RESULTS REFERENCED BELOW ARE AVAILABLE UPON REQUEST TO
TROXLER ELECTRONIC LABORATORIES, INC.

A. SPECIAL FORM CERTIFICATE(S) - RADIOACTIVE MATERIALS USED IN THIS GAUGE HAVE BEEN CERTIFIED AS "SPECIAL FORM" BY A RECOGNIZED "COMPETENT AUTHORITY". YOU ARE REQUIRED TO POSSESS A CURRENT COPY OF THE APPLICABLE SPECIAL FORM CERTIFICATE(S) TO TRANSPORT OR SHIP THIS GAUGE. A RECOMMENDED SOURCE WORKING LIFE IS 15 YEARS, BASED ON A SOURCE MANUFACTURER STUDY AND CAPSULE DESIGN.

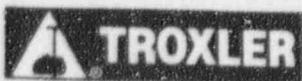
B. LEAK TEST - THE ABOVE REFERENCED LEAK TEST REVEALED THE RESIDUAL ACTIVITY TO BE LESS THAN 0.005 MICROCURIE.

C. SHIPPING INFORMATION - BOTH THE ABOVE LISTED NUCLEAR GAUGE AND/OR THE RELATIVE SHIPPING CASE MET THE APPLICABLE US DOT AND IAEA REQUIREMENTS AT THE TIME OF PACKAGE CERTIFICATION. THE GAUGE SHOULD ALWAYS BE TRANSPORTED IN THE RELATIVE SHIPPING CASE TO ENSURE COMPLIANCE WITH LABELING REQUIREMENTS. YOU ARE REQUIRED TO POSSESS A CURRENT COPY OF THE RESULTS OF APPLICABLE PACKAGE TESTING FOR US DOT 7A TYPE "A" IN ORDER TO TRANSPORT OR SHIP THIS GAUGE.

PROPEL SHIPPING NAME, CLASSIFICATION, LABELING AND MARKING

RAFI-1407 (1407 MATERIAL), SPECIAL FORM, H.O.S., 7, IMP2974, 05 000 21 1414 01
 1407 (1407 MATERIAL), SPECIAL FORM, H.O.S., 7, IMP2974, 05 000 21 1414 01

Exhibit - 7



300P Cornwallis Rd. P.O. Box 12057 Research Triangle Park,
North Carolina 27709, U.S.A.

Device - Model # 4640 B, Serial # 1699
Source(s) - Serial # 75-8497, Serial # _____
Date of Test: 8/19/96

Please print legibly and firmly. This is your return address label.

- FORT MYER CONSTRUCTION CORP
- 2237 33rd ST N.E
- Washington, DC 20018
- ATTN:

Your Name: ROY BURKE

Telephone: (202) 636-9535

ORIGINAL COPY

AUG 26 1996

LEAK TEST ANALYSIS

This certifies that the sample accompanying this form has been analyzed using an approved monitoring method that measures both beta/gamma & alpha contamination; and, that the results of this analysis shows the removable activity to be less than 0.005 microcuries.

M. Williams
8-23-96

Exhibit - 8



3008 Cornwallis Rd. P.O. Box 12057 Research Triangle Park,
North Carolina 27709, U.S.A.

Device - Model # 3241 C, Serial # 1895
Source(s) - Serial # 55-9180, Serial # _____
Date of Test: 8/19/96

Please print legibly and firmly. This is your return address label.

- FORT MYER CONSTRUCTION CORPORATION
- 2237 33rd ST NE
- WASHINGTON, DC 20018
- ATTN

Your Name: Roy Burke

Telephone: 202-636-9535

ORIGINAL COPY

LEAK TEST ANALYSIS

This certifies that the sample accompanying this form has been analyzed using an approved monitoring method that measures both beta/gamma & alpha contamination; and, that the results of this analysis shows the removable activity to be less than 0.005 microcuries.

M. W. Williams
8-23-96



FORT MYER CONSTRUCTION CORPORATION

2237 33rd Street, NE • Washington, DC 20018-1594 • (202) 636-9535 • FAX (202) 526-8572

Exhibit 10

August 30, 1996

Mr. Johannes Waaldijk
Chief, Plant Inspection Branch
D.C. Dept. of Public Works
4901 Shepherd Parkway, S.W.
Washington, D.C. 20032

Re: D.C. Consultant - HAZMAT Training

Dear Mr. Waaldijk:

On August 14, 1996 the U.S. Nuclear Commission sent an inspector to our asphalt lab on 5th Street, N.E., Washington, D.C. for the purpose of conducting an audit of our license requirements.

As a result of that inspection, Fort Myer Construction Corporation was found to be deficient in several areas. All of our deficiencies have now been corrected except to show that Mr. George Johnson has been retrained in the proper use and safety of nuclear gauges.

Since Mr. Johnson is an employee of the Washington, D.C. government, I must inform you that Mr. Johnson may no longer be in the lab area and/or use any type of nuclear equipment at our facility until I receive a valid training certificate. This training must be in accordance with the provisions set forth under the N.R.C. regulations. Mr. Johnson's prohibition of 'right of entry' shall be effective until a current certificate is received.

Sincerely,
Fort Myer Construction Corporation

Roy A. Burke
Vice President - Administration / Compliance

cc: N.R.C. Commission

D.C. - 44
APRIL 1980

Memorandum

Government of the District of Columbia

TO: ✓ Mr. Roy Burke
Corporate Compliance
Officer
Ft. Myer Construction
Company

Department: Public Works
Agency, Office: DECA/Plant
Inspection

FROM: J. Waaldijk, Chief, RSO

Date: 4-20-96

SUBJECT: Asphalt Content Nuclear Gauge

This is to document our agreement that an asphalt gauge type 3241-C serial #1895, which is the property of the D.C. Government will be temporarily used and housed for various periods not to exceed six months per period in the Laboratory at the District Paving N.E. Plant.

It is to be used solely by trained and qualified personnel for determining the asphalt content of plant mixes, while it is expected that you will be responsible for such matters as safety, security and inventory etc., consistent with your licensing obligations during these periods.

I have examined the Lab facilities and found that they are adequately prepared for this undertaking.

I also wish to take this opportunity to congratulate you on your excellence in planning, refurbishing and constructing your Lab.

cc: Mr. Parney Jenkins
Mr. Gary Burch
Mr. Wasi Khan
Mr. Anthony Kirkwood (NRC)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

AUG 28 1996

SEP - 3 1996
TO RB
cc: LAF
JR
GKA
CMK
KD

Docket No. 030-34012

License No. 08-30263-01

Mr. Roy A. Burke
Corporate Compliance Officer
Fort Myer Construction Corp.
2237 33rd Street, N.E.
Washington, D.C. 20018

SUBJECT: INSPECTION NO. 030-34012/96-001

Dear Mr. Burke:

On August 14, 1996, Mr. Steven R. Courtemanche of this office conducted a safety inspection at your facility at 2001 5th Street, N.E., Washington, D.C. of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The findings of the inspection were discussed with you, at the conclusion of the inspection.

Based on the results of this inspection, it appears that your activities were not conducted in full compliance with NRC requirements. A Notice of Violation is enclosed and categorizes each violation by severity level in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

Please use the enclosed self-addressed green envelope when you respond to this letter to assist us in the timely processing of your response. In accordance with Section 2.790 of NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and your reply will be placed in the Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public. The responses directed by this letter and the accompanying Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, PL 96-511.

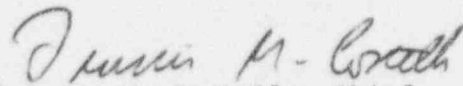
9409100149 3p

R. Burke
Fort Myer Construction Corp.

-2-

Your cooperation with us is appreciated.

Sincerely,



Francis M. Costello, Chief
Nuclear Materials Safety Branch 3
Division of Nuclear Materials Safety

Docket No.: 030-34012
License No.: 08-30263-01

Enclosure:
Notice of Violation

cc w/enclosure:
District of Columbia

NOTICE OF VIOLATION

Fort Myer Construction Corp.
Washington, D.C. 20018

Docket No. 030-34012
License No. 08-30263-01

During an NRC inspection conducted on August 14, 1996, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG 1600, the violations are listed below:

- A. 10 CFR 71.5 requires, in part, that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, comply with the applicable requirements of the Department of Transportation regulations in 49 CFR parts 170 through 189 appropriate to the mode of transport.

Pursuant to 49 CFR 172.101, radioactive material is classified as a hazardous material.

1. 49 CFR 172.704(c)(2) requires that a hazmat employee receive the training required by Subpart H at least once every two years.

Contrary to the above, as of August 14, 1996, a hazmat employee had not received the training required by Subpart H at least once every two years. Specifically, the hazmat employee transported a Troxler Model 4640 portable gauge containing 8 millicuries of Cesium-137, a radioactive material, and had not received Subpart H training in over two years.

This is a Severity Level IV violation (Supplement V).

2. 49 CFR 177.800(c) requires, in part, that a carrier not transport a hazardous material by motor vehicle unless each of its hazmat employees involved in that transportation is trained as required by this part.

49 CFR 177.816(a) requires that in addition to the training requirements of Section 177.800, no carrier transport, or cause to be transported, a hazardous material unless each hazmat employee who operates a motor vehicle be trained in the applicable requirements of 49 CFR parts 390 through 397 and the procedures necessary for the safe operation of that motor vehicle.

Contrary to the above, as of August 14, 1996, a hazmat employee involved in the transportation of hazardous material had not received the training required by 49 CFR 177.800(c) and 49 CFR 177.816(a).

This is a Severity Level IV violation (Supplement V).

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Notice of Violation

-2-

- B. Condition 12.A. requires, in part, that sealed sources containing licensed material be tested for leakage and/or contamination at intervals not to exceed six months or at such other intervals as are specified by the certificate of registration referred to in 10 CFR 32.210, not to exceed three years.

Contrary to the above, as of August 14, 1996, a sealed source containing 100 millicuries of Americium-241, a licensed material, was not tested for leakage and/or contamination at intervals not exceeding six months and another interval was not specified on the certificate of registration referred to in 10 CFR 32.210. Specifically, the licensee possessed a Troxler Model 3241C which had last been leak tested on January 29, 1996.

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Fort Myer Construction Corp. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. 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 to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

20 25 13 11 18

RECEIVED 2001



FORT MYER CONSTRUCTION CORPORATION

2237 33rd Street, NE • Washington, DC 20018-1594 • (202) 636-9535 • FAX (202) 526-8572

August 30, 1996

Mr. Johannes Waaldijk
Chief, Plant Inspection Branch
D.C. Dept. of Public Works
4901 Shepherd Parkway, S.W.
Washington, D.C. 20032

Re: D.C. Consultant - HAZMAT Training

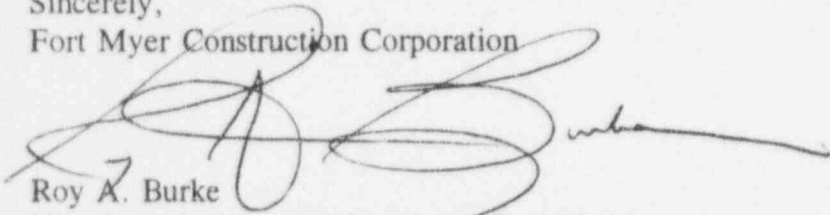
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Sincerely,
Fort Myer Construction Corporation



Roy A. Burke
Vice President - Administration / Compliance

cc: N.R.C. Commission

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SEP - 3 1996

REC'D IN LAS