

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

Nelson Excavating, Inc.  
Thomas, West Virginia

Docket No. 030-32882  
License No. 47-24923-02  
EA 96-308

As the result of inspections conducted on March 19 through April 1, 1996, and August 14 through 15, 1996, violations of Nuclear Regulatory Commission (NRC) requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the NRC 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:

I. Violations Assessed a Civil Penalty

- A. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

10 CFR 30.10(a)(2) prohibits a licensee or any employee of a licensee from deliberately submitting to the NRC information that the person knows to be incomplete or inaccurate in some respect material to the NRC.

Contrary to the above, the licensee provided inaccurate information to the Commission in that by letter dated September 17, 1992, the licensee informed the Commission that "Frederick Shobe is still and will remain the Radiation Safety Officer for Nelson Excavating." In fact, Mr. Shobe had not been in the employment of the licensee since September 1987, and was not acting in the capacity of Radiation Protection Officer. This information was material to the NRC in that Mr. Shobe, as Radiation Protection Officer, was approved by NRC and relied upon to oversee the safe conduct of licensed activities by the licensee. (01011)

- B. License Condition 11 states that the Radiation Protection Officer (RPO) for this license is Frederick Shobe.

Contrary to the above, from approximately September 1987 through March 1996, Mr. Shobe was not employed by the licensee and did not serve as the RPO for the licensee. (01021)

- C. 10 CFR 30.34(a) states, in part, that each license issued pursuant to 10 CFR Part 30 is subject to all the provisions of the Atomic Energy Act and to all valid rules, regulations, and orders of the Commission.

Enclosure 1

The Order Suspending License (Effective Immediately) issued on October 24, 1995 stated, in part, that the Nelson Excavating, Inc.'s license was suspended with respect to use of licensed materials.

Contrary to the above, the licensee deliberately used a portable moisture density gauge containing nominally 11 millicuries (mCi) of Cesium-137 and 44 mCi of Americium-241 on November 6, 1995, and January 4; April 22; July 12; July 16; July 17; July 18; July 19; July 22; July 24; July 25; July 26; and August 8, 1996, during the time that the Order Suspending License was effective. (01031)

This is a Severity Level I Problem (Supplement VII).  
Civil Penalty - \$5,000

## II. Violation not Assessed a Civil Penalty

License Condition 14 of License No. 47-24923-02 requires, in part, that licensed materials be tested for leakage and/or contamination at intervals not exceeding 6 months.

Contrary to the above, from February 20, 1995 to April 22, 1996, a period exceeding 6 months, no test for leakage and/or contamination was performed on licensed materials, specifically Cesium-137 and Americium-241 sources in a portable moisture density gauge. (02014)

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

Pursuant to the provisions of 10 CFR 2.201, the Nelson Excavating, 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; and (2) the reasons for the violation if admitted, and if denied, the reasons why. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued. 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 penalties, 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 II.

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 Atlanta, Georgia  
this 27th day of January 1997

MATERIALS LICENSE  
SUPPLEMENTARY SHEET

License Number

47-24923-02

Docket or Reference Number

030-32882

Amendment No. 1

Nelson Excavating  
Euclid Avenue Addition  
P.O. BOX 298  
Thomas, West Virginia 26292

In accordance with the Certificate of Disposition of Materials dated August 15, 1996, License No. 47-24923-02 is hereby terminated.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

DAVID J. COLLINS

DATE JAN 27 1997

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BY

*David J. Collins*

Region II, Division of Nuclear Materials Safety  
101 Marietta Street, N.W., Suite 2900  
Atlanta, GA 30323-0199