



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

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MAY 19 1978

MEMORANDUM FOR: James G. Keppler, Director  
Region III

FROM: E. Morris Howard, Director  
Division of Safeguards Inspection, IE

SUBJECT: DOW CHEMICAL COMPANY - RECOMMENDED CIVIL PENALTY

This is in response to your memorandum of March 2, 1978 in which you recommended that a civil penalty be imposed on the DOW Chemical Company for failure to properly protect their TRIGA Reactor on January 10, 1978.

The recommended civil penalty raised generic issues concerning public health and safety and NRC security requirements at non-power reactors. Correspondence which identified and analyzed these issues was provided J. Hind on April 14, 1978. NRR's formal written position is attached. The issues which primarily focused on the potential threat to public health and safety from other than "radiological" sabotage were not addressed by NRR. We will continue our efforts to clearly resolve these remaining issues.

We have determined that imposition of a civil penalty on DOW Chemical Company, as recommended, is now inappropriate. Based upon NRR's formal position, it would appear that noncompliance with physical security requirements at non-power reactors of this size and smaller (based on SNM inventory and power level) can be classified no higher than an Infraction. Although this seriously weakens our ability to enforce and therefore ensure compliance, we must continue to inspect and report our findings. As stated above, we hope to resolve the issues in the next few months,

CONTACT: L. L. Bush  
(492-8080)

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either in conjunction with the current development of 73.xx (proposed rule for the physical protection of non-power reactors), or separately.

*R. G. McClellan*

*/s/* E. M. Howard, Director  
Division of Safeguards Inspection  
Office of Inspection and Enforcement

Enclosure:  
As Stated

cc: Boyce Grier, Region I  
James O'Reilly, Region II  
Glenn Madsen, Region IV  
Robert Engelken, Region V  
John Davis, IE  
Norman Moseley, IE  
Harold Thornburg, IE  
Leo Higginbotham, IE  
Edward Jordan, IE  
Leonard Cobb, IE  
Victor Stello, NRR  
James Miller, NRR