

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Indianapolis Department of
Capital Asset Management
Indianapolis, Indiana

Docket No. 030-1962
License No. 13-19983-01
EA 97-166

During an NRC inspection conducted on March 19, 1997, with continuing NRC review through April 7, 1997, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure 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:

- A. Condition 11. of License No. 13-19983-01 limits the use, or supervision of use, of licensed material to individuals who have successfully completed the device manufacturer's training program for gauge users and have been designated by the Radiation Protection Officer.

Contrary to the above, on March 19, 1997, an individual not authorized by this license condition used licensed material. Specifically, an individual who had not been designated by the Radiation Protection Officer used a nuclear gauge.

- B. Condition 13. of License No. 13-19983-01 requires, among other things, that sealed sources and detector cells be tested for leakage and/or contamination at intervals not to exceed 6 months or at such other intervals as specified by the certificate of registration referred to in 10 CFR 32.210.

Contrary to the above, from August 6, 1996 to March 19, 1997, sealed sources within a Troxler Model 3440 nuclear gauge containing nominal activities of approximately 10 millicuries (370 MBq) of cesium-137 and 50 millicuries (1.85 GBq) of americium-241 had not been tested for leakage and/or contamination, and the registration certificate specified a 6 month interval.

- C. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

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49 CFR 177.817(a) requires that a carrier not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with 49 CFR 172.200-203. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, on March 19, 1997, the licensee transported a Troxler Model 3440 nuclear gauge containing hazardous material outside the confines of its plant without a shipping paper.

- D. 10 CFR 30.41(a) and (b)(5) require, in part, that no licensee transfer byproduct material except to a person authorized to receive such byproduct material under the terms of a specific or general license issued by the Commission or Agreement State.

Contrary to the above, between January 8, 1996 and March 19, 1997, the licensee transferred a Troxler Model 4640 nuclear gauge containing a nominal activity of 8 millicuries (296 MBq) of cesium-137 to Cole Associates, an entity not authorized to receive such byproduct material under the terms of a specific or general license issued by the Commission or Agreement State.

- E. 10 CFR 30.51(a) requires that each licensee keep records showing the receipt, transfer, and disposal of byproduct material.

Contrary to the above, as of March 19, 1997, the licensee did not keep records of numerous transfers of byproduct material.

- F. Condition 16 of License No. 13-19983-01 requires that physical inventories be performed every 6 months to account for all sources and/or devices received and possessed under the license.

Contrary to the above, from approximately July 1996 to March 19, 1997, the licensee failed to perform a physical inventory to account for all sources and/or devices received and possessed under the license.

- G. Condition 20. of License No. 13-19983-01 requires that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in certain referenced documents.

Referenced letter July 21, 1987, states that the licensed materials shall be stored only at the licensed facilities at 2001 N. Dr. Martin Luther King, Jr. Street, Indianapolis, Indiana.

Contrary to the above, from approximately February 1, 1997 to March 19, 1997, the licensee stored licensed material at a location other than the location specified by the license. Specifically, the licensee stored licensed material at 604 N. Sherman Drive, Indianapolis, Indiana.

- H. Item 1. of License No. 13-19983-01 indicates that the name of the licensee is Indianapolis Department of Transportation.

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Contrary to the above, as of 1993, the licensee's name was changed to Indianapolis Department of Capital Asset Management, and the license was not amended to reflect the change.

These violations represent a Severity Level III problem (Supplement VI).
Civil Penalty - \$2750

Pursuant to the provisions of 10 CFR 2.201, Indianapolis Department of Capital Asset Management (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, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. 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 why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. 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 the cumulative amount of the civil penalties if more than one civil penalty is proposed, 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.,

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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 penalty, and Answer to a Notice of Violation) should be addressed to: 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 III.

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 Lisle, Illinois
this 30th day of May 1997