

12/7/78

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

Radiation Technology, Inc.
Lake Denmark Road
Rockaway, New Jersey 07866Byproduct Material License
No. 29-13613-02NRC STAFF EXCEPTIONS TO INITIAL DECISION
AFFIRMING THE IMPOSITION OF CIVIL PENALTIES
IN THE AMOUNT OF \$3,300.00

On November 24, 1978 the Administrative Law Judge issued his "Initial Decision Affirming the Imposition of Civil Penalties in the Amount of \$3,300" (Initial Decision). In accordance with 10 CFR 2.762 of the Commission's regulations, the Staff files the following exceptions to this Initial Decision.

Exception 1

The Administrative Law Judge erred by failing to consider the complete citation in reaching his decision concerning item of non-compliance number 4. (Initial Decision at 27, lines 1-5). The Administrative Law Judge considered only part a. of item of non-compliance number 4 which involved a container with an alleged reading of 95 mR/hr. He failed to consider part b. of the citation which involved a drum allegedly reading 40 mR/hr (Initial Decision at 7). As a consequence, the Administrative Law Judge erroneously concluded that there was not reasonable, probative and substantial evidence to support citation 4 and the associated civil

penalty (Initial Decision at 27, lines 7-10).

Exception 2

The Administrative Law Judge erred by failing to consider the complete citation in reaching his decision concerning item of non-compliance number 5. (Initial Decision at 27, line 17, at 28, lines 1-4, at 28, lines 17-23). The Administrative Law Judge in considering item of noncompliance 5 only referred to the radioactive material described in item of noncompliance 4a and not the radioactive material described in item of noncompliance 4b. As a consequence, the Administrative Law Judge erroneously concluded that there was not reasonable, probative and substantial evidence to support citation 5 and the associated civil penalty (Initial Decision at 29, line 19, at 30, lines 1-3).

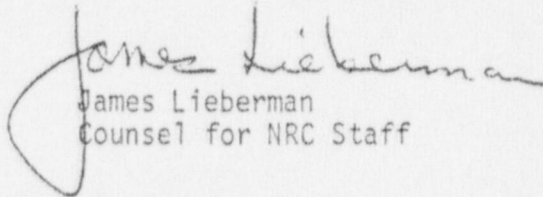
Exception 3

The Administrative Law Judge erred in interpreting 10 CFR 20.207 of the Commission's Regulations by concluding that "constant surveillance and immediate control" means "general control" (Initial Decision at 29, lines 2-4). As a consequence the Administrative Law Judge erroneously concluded that there was not probative and substantial evidence to support citation 5 and the associated civil penalty. (Initial Decision at 29, line 19, at 30, lines 1-3).

Exception 4

The Administrative Law Judge erred by concluding that the existing "controls over the place and the personnel permissible in the area operate to prevent unauthorized removal of the radioactive material from the place of storage." (Initial Decision at 29, lines 12-15). As a consequence the Administrative Law Judge erroneously concluded that there was not reasonable, probative and substantial evidence to support citation 5 and the associated civil penalty (Initial Decision at 29, line 19, at 30, lines 1-3).

Respectfully submitted,


James Lieberman
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of December, 1978.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

Radiation Technology, Inc.
Lake Denmark Road
Rockaway, New Jersey 07866

}
} Byproduct Material License
} No. 29-13613-02
}

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF EXCEPTIONS TO INITIAL DECISION AFFIRMING THE IMPOSITION OF CIVIL PENALTIES IN THE AMOUNT OF \$3,300.00 in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of December, 1978.

Hon. Samuel W. Jensch*
Chief Administrative Law Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

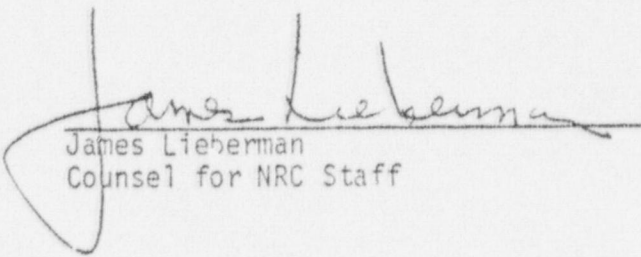
Dr. Martin A. Welt, President
Radiation Technology, Inc.
Lake Denmark Road
Rockaway, New Jersey 07866

Atomic Safety & Licensing Appeal Board* (3)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety & Licensing Board Panel* (1)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety & Licensing Appeal Panel* (5)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555


James Lieberman
Counsel for NRC Staff