



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

July 1, 1997

EA 97-193

Mr. John Herbert, Sr., President
Hagerstown Construction Services, Inc.
1023 Maryland Avenue
Hagerstown, Maryland 21740

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY
- \$2,750
(NRC Inspection Report No. 150-00019/97-001)

Dear Mr. Herbert:

This letter refers to the NRC inspection conducted on April 17 and 18, 1997, at the above mentioned facility, of activities authorized by an NRC general license granted to you pursuant to 10 CFR 150.20(a). During the inspection, three apparent violations of NRC requirements were identified. A copy of the NRC inspection report was forwarded to you with our letter dated April 28, 1997. On May 16, 1997, a predecisional enforcement conference was held in the Region I office to discuss the apparent violations, their causes, and your corrective actions. A copy of the predecisional enforcement conference report was sent to you with our letter dated May 21, 1997.

Based on the information developed during the inspection, as well as information provided during the enforcement conference, the three violations are being cited and are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). The circumstances surrounding the violations are described in detail in the subject inspection report. The most significant violation involved the performance of licensed activities in Pennsylvania and West Virginia on numerous occasions, from approximately July 1996 until April 11, 1997, without first filing the appropriate reciprocity forms with the NRC. These forms are required so as to provide the NRC the necessary notification that nuclear gauges (containing radioactive material) possessed under your Maryland license would be used in areas subject to NRC jurisdiction. Your failure to file these forms resulted in the NRC being unaware, for an extended period, that NRC licensed activities were being conducted by your company in those locations.

Notification of the NRC is important since the NRC, rather than the State of Maryland, regulates the use of the gauges in the Commonwealth of Pennsylvania, State of West Virginia, and in areas of exclusive Federal jurisdiction within Maryland. You should have known of the need to file these reciprocity forms since your company had filed for reciprocity with the NRC in 1993 to allow the use of the gauges at a site in Somerset, Pennsylvania. Your Maryland license states that it is valid only within the State of Maryland. During the predecisional enforcement conference, you indicated that in the fall of 1994, the individual responsible for scheduling field work and knowledgeable of NRC reciprocity requirements, left the employ of your company. However, two of the documents, where you did in the past request



reciprocity, were signed by the Radiation Safety Officer, who is still employed by your company. The Radiation Safety Officer stated to the NRC inspector that he was not aware when gauges were being used and did not get involved in reciprocity decisions. It is the responsibility of licensee management to be knowledgeable of the applicable NRC regulations and to assure that these regulations are met. Therefore, your failure in 1996 to file for reciprocity, represents, at a minimum, careless disregard for NRC requirements. Accordingly, this failure constitutes a willful violation of NRC requirements, and is classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) NUREG-1600. The violation is set forth in Section I of the enclosed Notice.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III violation. Since the violation was willful, the NRC considered whether credit was warranted for Identification and Corrective Action in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Credit for identification is not warranted since the violations were identified by the NRC. Credit for corrective actions is warranted because your corrective actions, once the violation was identified, were both prompt and comprehensive. These actions included: (1) stopping all work in Pennsylvania as soon as you were reminded of the reciprocity requirements; (2) requesting and obtaining information from the NRC regarding the filing for reciprocity; and (3) applying for an NRC license.

Therefore, to emphasize the importance of conducting NRC activities only after adhering to appropriate reciprocity requirements, so that the NRC can verify that the activities are conducted safely and in accordance with requirements, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed civil penalty in the amount of \$2,750.

The NRC also notes your failure to file Form 241 before conducting work in areas of exclusive Federal jurisdiction. Although these examples are not included in the formal citation, you are now on notice that 10 CFR 30.3 requires that such work be performed under a specific or general NRC license. On January 13, 1997, the regulations in 10 CFR Part 150 were modified to formalize NRC's practice of allowing Agreement State licensees to perform work in areas of exclusive Federal jurisdiction under the general license in 10 CFR 150.20 by filing Form 241. Future failures to comply with the requirements of 10 CFR 30.3 and 10 CFR 150.20 may be considered deliberate and may result in criminal as well as civil sanctions. We further note that it is your responsibility, *not* the responsibility of the Federal facility, to make certain that you have filed Form 241 if the work location requires that you do so. Until you obtain your own NRC license, if you perform work on any Federal property (even though the property may be located in an Agreement State), you should obtain a written determination from the Federal agency controlling the property in order to clarify whether the location of work is in an area of exclusive Federal jurisdiction.



The other two violations identified during the inspection involved the use of a radioactive materials package in an impaired condition, and the failure to mark a transport package with the letters "RQ". These two violations are described in Section II of the enclosed Notice and have been classified individually at Severity Level IV.

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. 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.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC 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.

The response directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,


Hubert J. Miller
Regional Administrator 

Docket No. 150-00019
Maryland License No. MD-43-007-01

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

cc w/encl:
State of Maryland
Commonwealth of Pennsylvania
State of West Virginia

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Incorporated**

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