

March 22, 1989

Docket No. 50-170
License No. R-84
EA 88-289

Defense Nuclear Agency
Armed Forces Radiobiology Research Institute
ATTN: Colonel George Irving, III, USAF, USC
Director
Bethesda, Maryland 20014

Gentlemen:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY
(NRC Inspection Report No. 50-170/88-04)

This refers to the NRC inspection conducted on October 26-28 and November 7, 1988 at your facility in Bethesda, Maryland of activities authorized by License No. R-84. The report of the inspection was forwarded to you on November 28, 1988. During the inspection, several violations of NRC requirements were identified, including multiple examples of some of these violations.

This also refers to the letter, dated December 2, 1988, sent to you by the Area Director of the United States Department of Labor's (DOL) Wage and Hour office in Baltimore, Maryland. In that letter, the Area Director issued a DOL finding that one of your employees was discriminated against at your facility for raising allegations of safety violations. After reviewing the DOL findings, as well as your letter dated January 19, 1989 which provides your basis for this employee action, the NRC supports the DOL finding that a discriminatory act occurred. This discriminatory action constitutes another violation of NRC requirements. On January 5, 1989, an enforcement conference was conducted with you and members of your staff to discuss the violations, their causes, and your corrective actions.

The violations, which are described in the enclosed Notice, represent a programmatic deficiency in the control of operations in that management did not adequately respond to potential safety issues raised by an employee. The violations include: (1) failure to perform written safety evaluations to assure that changes made at the facility, as described in the safety analysis report, did not involve unreviewed safety questions; (2) failure to adhere to procedural requirements on several occasions; (3) failure to ensure that some of your licensed operators satisfactorily completed the required requalification program; and (4) discrimination, in violation of 10 CFR 50.7, against an employee who raised safety concerns.

The NRC is concerned that, although this employee identified a number of technical deficiencies at the facility and informed appropriate levels of

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management and supervision on September 13, 1988, action was not taken to investigate and correct the deficiencies until the matter was brought to your attention on October 13, 1988. Even then, the deficiencies were not acknowledged by your managers, rather, a discriminatory action was taken against the individual, which could have a "chilling effect" on other employees who might be inclined to raise safety issues to management or the NRC.

These violations demonstrate the need for increased and improved management attention to facility operations to ensure that (1) deficiencies, when they exist, are promptly identified and corrected, and (2) individuals who identify these concerns feel free to raise them to management without fear of reprisal. To emphasize this need, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) for the violations described in the enclosed Notice. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (1988) (Enforcement Policy), the violations have been categorized in the aggregate at Severity Level III.

The base civil penalty amount for a Severity Level III violation or problem is \$2,500. The escalation and mitigation factors of the Enforcement Policy were considered and found to be offsetting. The NRC attaches great importance to comprehensive licensee programs for detection, correction, and reporting of problems that may constitute violation of regulatory requirements. In considering the identification and reporting factor, we noted that your programs failed to identify the violations as they occurred, and once identified by an employee, your managers failed to immediately investigate and correct the deficiencies. It was not until after the employee refused to withdraw the allegations that this matter was brought to your attention and you initiated notification of the NRC and an internal investigation by the Inspector General. Even then, the full scope of the deficiencies were not fully understood by your staff and specific corrective actions were not undertaken until after the subsequent NRC inspection identified various items as violations. Therefore, a 50% escalation is applied for this factor. Your corrective actions, though not initially prompt, were found to be extensive and thorough. We believe that those actions outlined in your letters of February 14 and March 1, 1989, provide a good foundation for assuring an effective solution to the facility's recent problems, and therefore, provide a basis for mitigating the proposed civil penalty by 50%. Therefore, on balance, no adjustment to the base civil penalty is appropriate.

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 Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

The responses 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,

Original Signed By
WILLIAM T. RUSSELL
William T. Russell
Regional Administrator

Enclosure:
Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/encl:
M. L. Moore, Reactor Facility Director
State of Maryland

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