

Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 23, 1995. The Notice states the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation. The Licensee responded to the Notice in letters dated March 21, 1995. In its response, the Licensee admitted the violation but requested mitigation because it disagreed with the NRC's application of the duration adjustment factor in determining the civil penalty amount.

III

After consideration of the Licensee's response and argument for mitigation contained therein, the NRC staff has determined as set forth in the Appendix to this Order, that the violation occurred as stated, that the duration of the noncompliance with appropriately used as a basis for deriving the civil penalty amount and, therefore, that the \$500 civil penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of \$500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the

hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether, on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 4th day of May 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix To Order Imposing Civil Monetary Penalty 999-90004

Appendix: Evaluation and Conclusion

On February 23, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. IHS Geotech & CMT, Inc. (Licensee) responded to the Notice on March 21, 1995. In its response, the Licensee admitted the violation but requested mitigation because it disagreed with the NRC's application of the duration adjustment factor in determining the civil penalty amount. A restatement of the violation and the NRC's evaluation and conclusion regarding the Licensee's request follow:

Restatement of Violation

10 CFR 30.3 states, in part, that except for persons exempted, no person shall possess or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations.

Contrary to the above, on numerous occasions between January 1991 and December 1994, IHS Geotech & CMT, Inc. (IHS) possessed and used byproduct material at various military facilities under exclusive federal jurisdiction without being authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations, and IHS was not exempted. (01013).

This is a Severity Level III violation (Supplement VI). Civil Penalty—\$500

Summary of Licensee's Response to Violation

The Licensee admitted the violation but requested mitigation because it disagreed with the NRC's application of the duration adjustment factor in determining the civil penalty amount.

Summary of Licensee's Request for Mitigation

The Licensee said "Once overlooked, the event had occurred. Only an inspection, as occurred, or some other event, would terminate the period of violation. A more timely review of NRC records or periodic inspections by Radiation Safety Officers on the military installations of San Antonio would have worked to my advantage."

NRC Evaluation of Licensee's Request for Mitigation

The licensee's argument suggests that someone other than the Licensee, i.e., the NRC or military officials, should have discovered the violation, resulting in it being corrected earlier than it was. This is contrary to a basic premise of the NRC's Enforcement Policy and regulatory philosophy, that it is licensees who are responsible for assuring compliance with all applicable requirements. It is not acceptable for a licensee to remain in noncompliance regardless of the frequency of NRC inspections. In addition, due to the Licensee's noncompliance with NRC requirements, the NRC staff was unaware of the Licensee's activities under NRC jurisdiction and, thus could not conduct inspections.

The NRC staff considered it significant that the violation continued for nearly four calendar years. This effectively denied the NRC staff the opportunity, over an extended period of time, to ensure that IHS Geotech & CMT, Inc., was appropriately licensed by the state of Texas and was conducting its activities safely when working in areas of exclusive federal jurisdiction.

The NRC's Enforcement Policy (Section VI.B.2 (f)), states that a base civil penalty may be escalated by as much as 100% to reflect the added technical or regulatory significance resulting from the violation or the impact of it remaining uncorrected for more than one day. The Policy adds that this factor should normally be applied in cases involving particularly safety significant violations or one where a significant regulatory message is warranted.

Although the NRC staff developed no evidence to suggest that the Licensee's activities were performed unsafely, the NRC staff has concluded that the lack of opportunity to verify that the Licensee was operating safely over nearly four years warranted an increase in the base civil penalty value to emphasize the regulatory significance of this violation.

When balanced against the remaining adjustment factors, this resulted in a proposed civil penalty of \$500. The NRC staff notes that the penalty proposed was below the costs the Licensee would have incurred had the Licensee either obtained an NRC license to conduct these same activities during the period of noncompliance or followed the accepted NRC practice of submitting a reciprocity form (Form 241) and paying the associated reciprocity fees for each of the years in question.

NRC Conclusion

The NRC staff concludes that the duration factor was appropriately considered in determining the civil penalty amount and that the \$500 civil penalty was correctly assessed. Consequently, the proposed civil penalty in the amount of \$500 should be imposed.

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