4201 Wilson Boulevard, Arlington, VA 22230

NOTIFICATION PROCEDURES:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Inventors and other collaborating persons, grantees, contractors; other Federal agencies; scientific experts from non-Government organizations; contract patent counsel and their employees and foreign contract personnel; United States and foreign patent offices; prospective licenses; and third parties whom NSF contacts to determine individual invention ownership or Government ownership.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–29267 Filed 11–4–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 150–00005; License No. Colorado 580–1; EA 96–459]

Western Colorado Testing, Inc., Grand Junction, CO; Order Imposing Civil Monetary Penalty

I

Western Colorado Testing, Inc., (WCTI or Licensee) is the holder of a General License pursuant to the provisions of 10 CFR 150.20(a). This authorizes any person who holds a specific license from an Agreement State to conduct the same activity in non-Agreement States subject to the provisions of 150.20(b). WCTI holds a specific license from the state of Colorado, an Agreement State, License No. 580–1.

II

An inspection of the Licensee's activities was conducted from October 11, 1996, through February 3, 1997, and an investigation was conducted from August 14, 1996, through January 8, 1997. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 13, 1997. The notice states the nature of the violation, the provisions of NRC requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated July 16, 1997. In its response, the Licensee stated that facts of the case warrant a reconsideration of both the characterization of the violation (as willful) and the proposed civil penalty.

III

After consideration of the Licensee's response and the arguments for mitigation or reconsideration of the civil penalty contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the 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 $2,500 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 Mr. 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. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. 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, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 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, TX 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 (or if written approval of an extension of time in which to request a hearing has not been granted), 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 issue 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 28th day of October 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusions

On June 13, 1997, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violation identified during an NRC inspection and investigation. Western Colorado Testing, Inc., (WCTI or Licensee) responded to the Notice in a letter dated July 16, 1997. In its response, the Licensee stated that facts of the case warrant a reconsideration of both the characterization of the violation (as willful) and the proposed civil penalty. However, the Licensee did not dispute the violation in its response and, in its April 1, 1997 letter responding to the inspection report, admitted the violation. The NRC's evaluation of the Licensee's request and conclusion regarding the Licensee's requests are as follows:

Summary of Licensee's Request for Mitigation

WCTI stated that, although management was aware of the requirement to inform the NRC prior to working in areas under NRC jurisdiction, this fact alone does not justify designation of the violation as willful, and the corresponding penalty of $2,500. In support of its position, the Licensee stated that the Radiation Safety Officer (RSO), who was ''not as honest and forthright'' as WCTI's president, had represented to WCTI's president that he filed the required Form 241; and that WCTI's president made every effort to ensure compliance with NRC requirements. WCTI also noted that its compliance efforts are reflected by the fact that there has never been any previous escalated enforcement action against it. WCTI pointed out that, according to the NRC's Enforcement Policy, previous escalated enforcement is a factor that is considered in assessing a civil penalty, and that this factor was not considered in the proposed assessment of the civil penalty.

WCTI noted that, in cases where the NRC concludes that no willful violation has occurred, and no escalated enforcement action has been taken within the two prior years or during the two prior inspections,

generally no penalty assessment is even proposed. WCTI maintained that its situation was distinguishable from that of other testing companies that had been ''fined'' by the NRC for willful violations of the same regulations. In this regard, WCTI claimed that it should not be classified together with those testing firms in which the principals were deliberately ignoring compliance requirements.

Finally, the Licensee argued that, upon being notified that Form 241 had not been filed, WCTI took prompt corrective action to ensure compliance and effective comprehensive action to prevent recurrence of the violation.

NRC Evaluation of Licensee's Request for Mitigation

Section VI.A. of the Enforcement Policy provides that, in general, licensees are held responsible for the acts of their employees. The Commission formally considered the responsibility issue between a licensee and its employees in its decision concerning the Atlantic Research Corporation case, CLI–80–7, dated March 14, 1980. In that case, the Commission stated, in part, that ''a division of responsibility between a licensee and its employees has no place in the NRC regulatory regime which is designed to implement our obligation to provide adequate protection to the health and safety of the public in the commercial nuclear field.''

Not holding the licensee responsible for the actions of its employees, whether such actions result from negligence or willful misconduct, is tantamount to not holding the licensee responsible for the use or possession of licensed material. If the NRC adopted this position, there would be less incentive for licensees to monitor their own activities to assure compliance because licensees could attribute noncompliance to employee negligence or misconduct. Therefore, notwithstanding WCTI's argument that the blame for the violation rests with the former company RSO, under long-established Commission Policy and case law, the company is still responsible for the actions of its former RSO. Further, the NRC notes that the violation continued to exist in 1996, after the assignment of a newly trained RSO. This detracts from the Licensee's argument that the blame lay with one particular former RSO.

As WCTI noted, Section VI.B.2 of the NRC's Enforcement Policy provides for consideration of previous escalated enforcement in the civil penalty assessment process. However, the civil penalty assessment process considers several factors, including whether the violation is willful. If any one of these considerations applies, the policy states that the NRC should normally consider identification in addition to corrective action in the civil penalty assessment process (regardless of the licensee's previous escalated enforcement). In this case, the NRC considered both identification and corrective action in determining the civil penalty because the NRC concluded that the violation was willful.

The term ''willfulness,'' as defined by Section IV.C. of the NRC Enforcement Policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify, to and *including careless disregard for requirements* (emphasis added). In this case, as described in the NRC's Notice, the NRC concluded that WCTI (not its president), through the action of one or more of its representatives, committed a violation with careless disregard for NRC regulations, a condition that clearly meets the NRC's definition of a willful violation. As described in the Notice, the NRC's conclusion was based on several grounds, including the fact that WCTI had knowledge of the requirement to file NRC Form 241 (which WCTI admits in its response).

As to Licensee's discussion of the NRC Enforcement Policy, civil penalties are not normally proposed in cases where the NRC concludes that no willful violation has occurred and no escalated enforcement action has been taken within the two prior years or two prior inspections, provided that prompt and comprehensive corrective action is taken. However, the policy provides for consideration of civil penalties in cases involving willfulness.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation and enforcement sanction are best suited to the significance of the particular violation. In this case, as noted above, the NRC concluded that the violation was willful. Therefore, in accordance with Section VI.B of the Enforcement Policy, the NRC concluded that: (1) No credit was warranted for identification because the NRC identified the violation; and (2) credit was warranted for WCTI's prompt and comprehensive corrective action (had the NRC concluded otherwise, a civil penalty of $5,000 would have been proposed).

In its response, WCTI claimed that its case was ''readily distinguishable'' from other similar enforcement actions such as EA 95–270, ''Foley Construction Services,'' EA 95–101, ''Testco, Inc.,'' and EA 93–241, ''S.K. McBryde, Inc.'' The NRC agrees that WCTI's case is distinguishable from the cases cited by WCTI in that the cases cited involved deliberate violations, not violations involving careless disregard. However, WCTI's comparison of the civil penalty in this case to that in the cases cited in flawed in that: (1) The civil penalty in the Foley Construction Services case was based on the civil penalty assessment process described in an earlier Enforcement Policy;[1] (2) the enforcement action taken against Testco, Inc., involved an Order Prohibiting Involvement in NRC-Licensed Activities to President of the company, as well as a civil penalty to the licensee, which was initially based on enforcement discretion and subsequently reduced from $5,000 to $1,000; and (3) the S. K. McBryde case did not involve an NRC Form-241 violation, it involved a Severity Level IV violation for failure to maintain complete and accurate records and a civil penalty that was based on the civil penalty assessment process described in the earlier Enforcement Policy.[1] Furthermore, the enforcement action against WCTI is consistent with other recent cases involving careless disregard by testing companies to submit Form-241 where corrective action credit was warranted. For example, penalties of $2,500 were assessed in enforcement actions involving EA 96–382, ''Energy Technologies, Inc.,'' EA 96–382, ''Grandin Testing Lab, Inc.,'' and EA 96–447, ''Testing Laboratories, Inc.''[2]

NRC Conclusion

The NRC concludes that the violation occurred as stated and that the Licensee has not provided adequate justification for reconsideration of the characterization of the violation as ''willful'' or for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 97–29242 Filed 11–4–97; 8:45 am]

BILLING CODE 7590–01–P

[1] In this earlier Enforcement Policy, the base amount for a Severity Level III was $500 and the civil penalty assessment process involved consideration of 6 factors. Under the current Enforcement Policy, the base amount for a Severity Level III is $2,500 and the civil penalty assessment process involves consideration of 2 factors.

[2] These cases are available on the NRC web site at ''http://www.nrc.gov/oe/'', which is maintained by the Office of Enforcement.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 AND 50–323]

Pacific Gas and Electric Company; Diablo Canyon Power Plant Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Power Plant (DCPP), Units 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt Pacific Gas and Electric Company from the requirements of 10 CFR 70.24, which requires in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the