NUCLEAR REGULATORY COMMISSION

[Docket No. 150–00016, License No. Kentucky 201–431–51 EA 98–021]

Ground Engineering and Testing Service, Inc.; Louisville, Kentucky; Order Imposing Civil Monetary Penalty

I

Ground Engineering and Testing Service, Inc. (Licensee) is the holder of Kentucky Materials License No. 201–431–51 which was amended on November 29, 1994. The license authorizes the Licensee to possess and use licensed sealed sources in portable gauges for measurement of the properties of construction materials at temporary job sites anywhere in the Commonwealth of Kentucky.

II

An inspection of the Licensee's activities was conducted by the NRC on December 12, 1997. The results of this inspection 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 March 25, 1998. The Notice states the nature of the violation, the provision 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 April 22 and 23, 1998. In its responses, the Licensee admitted that the violation occurred, but denied that the violation was the result of careless disregard and requested that the civil penalty be mitigated based upon its prompt corrective action.

III

After consideration of the Licensee's response and the statements of fact, explanation, 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 amount of the proposed civil penalty should be reduced by $2,750 based upon the Licensee's prompt corrective action, and that a civil penalty in the amount of $2,750 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 $2,750 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. 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, D.C. 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, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Deputy Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW, Suite 23T85, Atlanta, Georgia, 30303.

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 15th day of June 1998.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Deputy Executive Director for Regulatory Effectiveness.

Appendix—Evaluation and Conclusion

On March 25, 1998, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection conducted on December 12, 1997. Ground Engineering and Testing Service, Inc. (Licensee) responded to the Notice in letters dated April 22 and 23, 1998. The Licensee admitted the violation, but contended that its actions did not represent careless disregard for regulatory requirements, and that its action in response to the violation constituted prompt corrective action warranting credit. The NRC's evaluation and conclusion regarding the Licensee's request is as follows:

Restatement of Violation

10 CFR 30.3 requires, in part, that no person shall possess or use byproduct material except as authorized by a specific or general license issued by the NRC.

10 CFR 150.20(a) provides, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States and areas of exclusive federal legislative jurisdiction subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States or areas of exclusive federal legislative jurisdiction shall, at least three days before engaging in each activity, file four copies of NRC Form 241, ''Report of Proposed Activities in non-Agreement States,'' with the Regional Administrator of the Appropriate NRC Regional Office.

10 CFR 150.20(b)(3) requires, in part, that any person engaging in activities in non-Agreement States or areas of exclusive federal legislative jurisdiction shall not, under the general license concerning activities in non-Agreement States, possess or use radioactive materials, or engage in the activities authorized in paragraph 10 CFR 150.20(a), for more than 180 days in any calendar year.

Contrary to the above, between January 1, 1997 and December 18, 1997, the licensee used licensed materials for a total of 290 days at sites under NRC jurisdiction in West Virginia and Indiana, and in an area of exclusive federal jurisdiction at Fort Knox, Kentucky, without either a specific or general license issued by the NRC and without filing NRC Form 241, as required. The specific sites and periods of usage were as follows:

Month	Days used	Location	Cumulative days in 1997	
January	21	Fort Knox, KY	21	
March	9	Buffalo, WV		30
April	30	Buffalo, WV		60
May	31	Buffalo, WV		91

Month	Days used	Location	Cumulative days in 1997	
June	30	Buffalo, WV		121
July	31	Buffalo, WV		152
August	31	Buffalo, WV 31; Ft. Knox 3	183	
September	30	Buffalo, WV 30; Ft. Knox 7	213	
October	28	Buffalo, WV 28; Ft. Knox 9; Clarksville/Jeffersonville IN.	7	241
November	30	Buffalo, WV 30		271
December	19	Buffalo, WV 19; Ft. Knox 1	290	

This is a Severity Level III violation (Supplement VI).

Civil Penalty—$5,500.

Summary of Licensee's Request for Mitigation

The Licensee admitted that the violation occurred as stated in the Notice, but denied that the violation was the result of careless disregard for NRC requirements and protested the civil penalty of $5,500. In support of its assertion that the violation was not the result of careless disregard, the Licensee explained that the Louisville office, where the violation was identified, had been informed by the corporate office that licensing for non-Agreement States would be obtained prior to initiation of work. However, the corporate office person responsible for obtaining such licenses did not obtain the licenses. The Licensee asserted that this situation resulted from the fact that the corporate office was undergoing a troubled period, but that there had been no willful disregard for NRC requirements. Furthermore, the Licensee noted that any actions required by an NRC license had been completed, and that no effort was made to conceal the use of radioactive equipment at sites requiring an NRC license, and that its compliance in other ways refutes the claim of ''careless disregard.''

The Licensee also asserted that, contrary to the claim in the Notice that there had been delay in halting use of nuclear gauges, immediately upon determining that an NRC license had not been obtained, it halted all testing with portable nuclear gauges at sites under NRC jurisdiction. According to the Licensee, this constituted appropriate, prompt corrective action warranting credit.

NRC Evaluation of Licensee's Request for Mitigation

The Licensee has provided no new information which would refute a finding of careless disregard. Ground Engineering was aware of the requirement of filing for reciprocity, as evidenced by its having done so in 1995. Moreover, the Licensee was notified by the Commonwealth of Kentucky on September 23, 1997, during a Kentucky inspection, of the need to file for reciprocity or obtain an NRC license prior to conducting operations in areas of NRC jurisdiction. Notwithstanding this notification, Ground Engineering continued to use licensed materials in areas under NRC jurisdiction without an NRC license until December 1997. The finding of careless disregard was based on the fact that Ground Engineering had been given this notice, but did not take sufficient steps to assure that a proper license was obtained. In addition, the Kentucky license was amended in September 1997 to clearly state that it did not authorize operations in areas under exclusive federal jurisdiction. This should have served as an additional reminder of the need to obtain reciprocity or a specific NRC license prior to conducting licensed activities in these areas.

The Licensee's contention that its failure to file for reciprocity resulted from its misplaced reliance upon the corporate office, which was undergoing a troubled period, does not excuse the Licensee from compliance with NRC requirements. If fact, its knowledge that the corporate office was undergoing a period of upheaval should have alerted it to the fact that it needed to confirm that the proper license for conducting licensed activities had been obtained.

With regard to the Licensee's claim that its corrective action warranted credit, the NRC's conclusion that the Licensee's corrective action was not prompt was based on the belief that the licensed material continued to be used until December 18, 1997. However, in its responses, the Licensee provided new information to the NRC which indicates that on December 12, 1997, after the Licensee was informed by the NRC of the violation, all operations at the Buffalo, West Virginia site were suspended and the gauge was placed in locked storage. Based upon this new information, the NRC has determined that the Notice should be revised to reflect that you used licensed material between January 1 and December 12, 1997, rather than the previously cited period of time, January 1 through December 18, 1997. In addition, we have also determined that credit is warranted for your prompt corrective action.

NRC Conclusion

The NRC has concluded that an adequate basis for retracting a finding of careless disregard was not provided. However, the NRC has determined that the Licensee provided an adequate basis for mitigating the civil penalty in light of its prompt corrective action. Consequently, the proposed civil penalty in the amount of $5,500 should be mitigated to $2,750 and should be imposed.

[FR Doc. 98–16646 Filed 6–22–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 55–22234–SP ASLBP No. 98–745–01–SP]

Randall L. Herring; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Randall L. Herring

(Denial of Reactor Operator's License Application)

The hearing, if granted, will be conducted pursuant to 10 CFR Part 2 Subpart L of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a denial by NRC Staff of Mr. Herring's reactor operator's license application and Mr. Herring's request for a hearing pursuant to 10 CFR Section 2.103.

The Presiding Officer in this proceeding is Administrative Judge Charles Bechhoefer. Pursuant to the provisions of 10 CFR § 2.722, the Presiding Officer has appointed Administrative Judge Richard F. Cole to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bechhoefer and Judge Cole in accordance with § 2.701. Their addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555