

July 29, 1997

Mr. John Bradburne
[]
Fluor Daniel Fernald Corporation
P.O. Box 538704
Cincinnati, OH 45253-8704

EA 97-05

Subject: Preliminary Notice of Violation and Proposed Imposition of Civil
Penalty - \$10,000 (NTS-OH-FN-FERM-FEMP-1996-0005)

Dear Mr. Bradburne:

This letter refers to the Department of Energy's (DOE) evaluation of the facts and circumstances surrounding the failure of the Fluor Daniel Fernald Corporation (FDF) to effectively complete corrective actions for the referenced noncompliance, although it informed the DOE Fernald Project Office that such work had been completed.

The DOE Office of Enforcement and Investigation initiated an evaluation of this noncompliance and issued an Investigation Summary Report on May 16, 1997, in which it was concluded that potential violations of 10 CFR 830.120(c)(iii) took place. On June 12, 1997, a conference was held with you and members of your staff to discuss the facts and circumstances surrounding these violations, their safety significance, and the status of corrective actions taken or planned to resolve the problem. A Conference Summary Report is enclosed.

The matter under review involved deficiencies in [] radioactive waste and nuclear material inspection records maintained by FDF for two types of nuclear material storage containers (T-hoppers and J-hoppers). These inspections were conducted to confirm, among other things, the material condition and structural integrity of the containers. By memorandum dated March 18, 1997, FDF advised the DOE Fernald Project Office that all corrective actions pertaining to the outstanding noncompliance were completed. DOE Fernald Project Office conducted a sampling of the corrective actions and established that several of these actions with respect to the inspection program had not been effectively implemented since DOE found that deficiencies were continuing to occur.

As described in the enclosed Preliminary Notice of Violation (PNOV) and Proposed Imposition of Civil Penalty, the failure to fully and effectively implement corrective actions, as reported to be complete to DOE, constitutes a violation of 10 CFR 830.120 (c)(iii), (Quality Improvement). Specifically, it is clear that corrective actions were not adequate to prevent recurrence of deficiencies. While the safety significance of the violations themselves is low, the failure to assure effective implementation of the corrective actions is of particular concern because this is the second case in which corrective actions did not adequately address and resolve these same noncompliance issues. DOE is entitled to rely upon your formal assurances that corrective actions are sufficiently comprehensive and completed as stated. Further, DOE's decision to defer enforcement on previous cases was based, in part, on reliance on your commitment to implement the proposed corrective actions. Therefore, in accordance with the "General Statement of Enforcement Policy" (Enforcement Policy), 10 CFR 820, Appendix A, these violations have been classified as a Severity Level III problem.

A civil penalty is normally considered for a Severity Level III problem when the violations are recurring and of a similar nature. Given the recurring and similar nature of these violations to previous cases with respect to the failure to implement effective corrective actions, I have concluded that it is appropriate to issue the enclosed PNOV and Base Civil Penalty in the amount of \$10,000 to emphasize the need to assure the full and effective implementation of corrective actions to which FDF has committed in order to resolve deficiencies.

The base civil penalty for a Severity Level III problem is \$10,000. The escalation and mitigation factors set forth in Section VIII of the Enforcement Policy were considered and no adjustments were determined to be appropriate. Specifically, the failure to identify that corrective actions were not implemented as stated was identified by DOE. DOE also considered escalating the base civil penalty for failure to implement comprehensive corrective actions. However, since this failure formed the basis of the decision to issue the PNOV and Base Civil Penalty, further escalation based on this factor is inappropriate.

DOE has also evaluated whether FDF's formal, written assurances that corrective actions were completed also constituted a violation of 10 CFR 820.11 (Information Requirements). Given the facts and circumstances of this case, DOE concludes that while FDF's submittal regarding the status of corrective actions was not complete and accurate, additional enforcement action with respect to this issue is not warranted.

You are required to respond to this letter and you 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, DOE will determine whether further action is necessary to ensure compliance with the applicable nuclear safety requirements.

Sincerely,

Tara O'Toole, M.D.,M.P.H.
Assistant Secretary
Environment, Safety and Health

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Enclosures:
Preliminary Notice of Violation
and Proposed Imposition of Civil Penalty
Conference Summary Report
Enforcement Conference Attendance List

**PRELIMINARY NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

Fluor Daniel Fernald Corporation
[] Radioactive Waste and Nuclear Material Containers
EA 97- 05

As a result of confirmation sampling by the DOE Fernald Project Office of corrective actions stated to be implemented by Fluor Daniel Fernald Corporation (FDF) in response to noncompliance number NTS-OH-FN-FERM-FEMP-1996-0005, violations of DOE requirements were identified. In accordance with the "General Statement of Enforcement Policy," 10 CFR 820, Appendix A, DOE proposes to impose a civil penalty

pursuant to Section 234A of the Atomic Energy Act of 1954, as amended, 42 USC 2282a, (the Act) and 10 CFR Part 820. The particular violations and associated civil penalty are set forth below.

10 CFR Part 830.120 (c)(iii) requires that "...Items, services, and processes that do not meet established requirements shall be identified, controlled, and corrected according to the importance of the problem and the work affected. Correction shall include identifying the causes of problems and working to prevent recurrence...."

Contrary to the above, FDF corrective actions were not effectively implemented in that DOE identified a continuation of the same deficiencies following notification by FDF on March 18, 1997, of the completion of their corrective actions. In particular, as of April 9, 1997, DOE determined that the following deficiencies were continuing to occur:

1. Inspectors were not using current revisions of the inspection report as required by FDF Procedure 20-C-020, Rev. 2, dated 10/31/96.
2. Inspection reports were not being properly completed, as required by FDF Procedure 20-C-020, Rev. 2, dated 10/31/96. Specifically, the inspection report required FDF inspectors to provide an affirmative or negative determination as to whether acceptance criteria for nuclear material storage containers (i.e., T-Hoppers and J-Hoppers) were met. However, in multiple instances, the inspectors did not record this affirmative or negative determination.

3. In multiple cases, FDF failed to identify and document the needed corrective actions to correct deficiencies found during the inspections, as required by FDF Procedure 20-C-020, Rev 2. dated 10/3/96.
4. Training for supervisors and inspectors, including both classroom and on-the-job training, was not completed in accordance with procedural requirements as required by FDF Procedure 20-C-020, Rev. 2., dated 10/31/96.

This violation constitutes a Severity Level III problem for a non-transuranic facility and a civil penalty in the amount of \$10,000 is assessed.

Pursuant to the provision of 10 CFR Part 820.24, FDF is hereby required within 30 days of the date of this Notice and Proposed Imposition of Civil Penalty, to submit a written statement or explanation to the Director, Office of Enforcement and Investigation, Office of the Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290, Attention: Office of the Docketing Clerk, CXXI, Suite 300, with copies to the Manager, DOE Fernald Project Office, the Acting Manager, Ohio Field Office and to the cognizant DOE Secretarial Office for the facility that is the subject of this Notice. The reply should be clearly marked as a "Reply to a Preliminary Notice of Violation and Proposed Civil Penalty" and should include for each violation: (1) admission or denial of the alleged violation, (2) the facts set forth above which are not correct and the reasons for the violation if admitted, and if denied, the reasons they are not correct, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

Any request for remission or mitigation of civil penalty must be accompanied by a substantive justification demonstrating extenuating circumstances or other reasons why the assessed penalty should not be paid in full. Unless the violations are denied, or remission or mitigation is requested within 30 days after the issuance of this Preliminary Notice of Violation and Civil Penalty, FDF shall pay the civil penalty (imposed under Section 234a of the Act) by check, draft or money order payable to the Treasurer of the United States (Account Number 891099) mailed to the Director, Office of Enforcement and Investigation, U.S. Department of Energy. Should the contractor fail to answer within the time specified, an order imposing the civil penalty will be issued.

If requesting mitigation of the proposed penalty, FDF should address the adjustment factors in Section VIII.C. of 10 CFR 820, Appendix A.

Tara O'Toole, M.D., M.P.H.
Assistant Secretary
Environment, Safety and Health

Dated at Washington, D.C.
this day of July 1997