

December 18, 1996

Mr. John Petsco, Sr.
[]
211 Prospect Street
Port Jefferson, NY 11777

EA 96-06

Subject: Preliminary Notice of Violation (NTS-CH-BH-BNL-PE-1996-0001)

Dear Mr. Petsco:

This letter refers to the Department of Energy's (DOE) evaluation of the circumstances surrounding radiological deficiencies associated with incidents occurring on January 29, 1996, and April 3, 1996, involving work performed by your company at DOE's Brookhaven National Laboratory (BNL). On August 13-15, 1996, the DOE Office of Enforcement and Investigation conducted an on-site review of these and other matters and prepared an Investigation Summary Report. Since the scope of the on-site review extended beyond the issues associated with Petsco and Son, Inc., and its subcontractors, a redacted report (i.e., a report containing only the information about Petsco and Son, Inc.) is enclosed.

Based on our evaluation, DOE has concluded that violations of DOE's Occupational Radiation Protection Rule (10 CFR 835) likely occurred. As a General Contractor to BNL, Petsco and Son, Inc., has specific responsibility for its own supervision and for the supervision of any subcontractors it may use and has legal obligations for regulating compliance under 10 CFR 835. Specifically, 10 CFR 835.3(a) states that no person (defined to include any corporation, firm, etc.) shall take or cause to be taken any action inconsistent with the requirements of this part or any program established by this part.

Section A of the enclosed Preliminary Notice of Violation (PNOV) describes violations occurring on January 29, 1996, and April 3, 1996, involving failure to follow radiological warning signs established by BNL at its facilities for the safety and protection of workers. These incidents involved an employee of the General Contractor, Petsco and Sons, Inc., In both instances, radiological warning signs were removed without BNL knowledge or authorization.

Sections B and C of the enclosed PNOV describe several violations of 10 CFR 835 requirements associated with the April 3, 1996, incident in which an employee of Petsco and Son, Inc., entered a Contamination Area without the required protective clothing and without the required radiological worker training. This event occurred in the filter room of [a building]. Protective clothing as required by 10 CFR 835.404(g) was not worn by the entrant even though the latest radiological survey showed that contamination existed at levels greater than [a multiple of] Appendix D, 10 CFR 835 levels.

In addition, Radiation Worker II training was required for entry into the Contamination Area; however, the Petsco and Son, Inc., employee entered the area without this level of radiological training. These matters are of particular concern to DOE in that the individual involved is the company's Safety Officer, and as such, is responsible for ensuring that the radiological program requirements for Petsco and Son, Inc., and for subcontractors of Petsco and Son, Inc., are implemented.

To emphasize the need to implement and comply with workplace radiological measures specified in 10 CFR 835, I am

issuing the enclosed PNOV in accordance with the "General Statement of Enforcement Policy," 10 CFR 820, Appendix A. The violations described in enclosed PNOV involving the radiological deficiencies that occurred in [the building], would, if considered individually, normally be classified as Severity Level III or lower. However, these violations, considered collectively, have been classified as a Severity Level II violation. These violations are being classified at Severity Level II because the occurrences were due largely to the actions of your company's Safety Officer. DOE would normally propose a civil penalty for a Severity Level II violation. In this case, a civil penalty would have been considered for Petsco and Son, Inc.; however, BNL, including its subcontractors and suppliers, has a statutory exemption from civil penalties.

You are required to respond to this letter and should follow the instructions specified in the enclosed PNOV when preparing your response. In your response you should document the specific actions taken and any additional actions you plan to take to prevent recurrence. After reviewing your response to this PNOV, 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
Investigation Summary Report

PRELIMINARY NOTICE OF VIOLATION

Petsco and Son, Inc.
Brookhaven National Laboratory
[A Building]
EA 96-06

As a result of a Department of Energy (DOE) evaluation of events occurring on January 29, 1996, and April 3, 1996, at Brookhaven National Laboratory (BNL) violations of DOE nuclear safety requirements were identified. In accordance with "General Statement of Enforcement Policy," 10 CFR Part 820, Appendix A, DOE proposes to issue a Preliminary Notice of Violation (PNOV) pursuant to Section 234A of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282a., and 10 CFR 820. The particular violations are set forth below.

- A. 10 CFR 835.3(a) states that no person shall take or cause to be taken any action inconsistent with the requirements of 10 CFR 835 or any program, plan, schedule or other process established by 10 CFR 835.

10 CFR 835.501(a) requires that personnel entry control be maintained for each radiological area.

10 CFR 835.501(b) requires that the degree of radiological control be commensurate with existing and potential radiological hazards within the area.

10 CFR 835.501(c)(1) requires that signs and barricades be used to ensure control of radiological areas.

Contrary to the above, BNL had established personnel entry controls for radiological areas commensurate with existing and potential radiological hazards within the areas through signs and barricades, violations of 10 CFR 835 occurred as follows:

1. On January 29, 1996, in the yard of [the building], employees of a subcontractor to Petsco and Son, Inc., removed radiological area posting stating, "Controlled Area," "Radioactive Materials Area," and "Contact Health Physics Prior to Entry," without BNL knowledge or authorization.

2. On April 3, 1996, in the filter room of [the building], the Safety Officer of Petsco and Son, Inc., crossed a step-off pad, removed a stanchion holding a yellow/magenta rope barricade in place and entered a radiological area posted as a Contamination Area and a Radiation Area without BNL knowledge or authorization.

B. 10 CFR 835.404(g) states that protective clothing shall be required for entry to areas in which removable contamination exists at levels exceeding those specified in 10 CFR 835, Appendix D.

10 CFR 835, Appendix D, identifies removable surface radioactivity values, above which protective clothing must be worn, in disintegration per minute per 100 square centimeters (dpm/100 cm²) for radionuclides emitting beta-gamma radiation at 1,000 dpm/100 cm².

Contrary to the above, BNL had established protective clothing requirements for personnel entry into the filter room of [the building]. However, the results of a radiological survey data taken the previous day that indicated the presence of [] removable surface radioactivity [greater than the limit], and on April 3, 1996, the Safety Officer of Petsco and Son, Inc., entered the Contamination Area without the required protective clothing and equipment.

C. 10 CFR 835.902 requires that radiological worker training programs be established and conducted and that training shall precede assignment as a radiological worker or be concurrent with assignment as a radiological worker unless the worker is accompanied by and under the direct supervision of a trained radiological worker.

BNL Plant Engineering Procedure EP-ES&H-300, Personnel Monitoring for Ionizing Radiation & ALARA, Revision 1, January 1, 1996, requires that workers receive the level of radiation training commensurate with job requirements.

Section 6.1.1, Attachment EP-ES&H-300A, requires that workers whose job assignments involve entry into Contamination Areas complete Radiological Worker I training plus the two specialized modules, (High Radiation/Very High Radiation Areas and Contamination/Very High Contamination Areas), or DOE Radiological Worker II training.

Contrary to the above, on April 3, 1996, the Safety Officer of Petsco and Son, Inc., entered a Contamination Area in the [building] filter room without completing the required two training modules or the Radiological Worker II training.

Collectively, these violations that directly involve the company's Safety Officer constitutes a Severity Level II violation.

Pursuant to 10 CFR 820.24, Petsco and Son, Inc., is hereby required within 30 days of the date of this Notice, to submit a written statement or explanation to Dr. Carson Nealy, [], U. S. Department of Energy, Building 464, Post Office Box 5000, Upton, New York 11973, with a copy to the Docketing Clerk, Office of Enforcement and Investigation, EH-10, CXXI/3, U.S. Department of Energy, 19901 Germantown Rd., Germantown, MD 20874-1290. This reply should be clearly marked as a "Reply to a Preliminary Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved.

Sincerely,

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

Dated at Germantown, Maryland
this 18th day of December, 1996