

April 18, 2008

EA-08-066

Mr. Paul Y. Wang, President
Wang Engineering, Inc.
1145 North Main Street
Lombard, IL 60148

SUBJECT: NOTICE OF VIOLATION – WANG ENGINEERING, INC.

Dear Mr. Wang:

This refers to a report from the Illinois Emergency Management Agency (IEMA), Division of Nuclear Safety and a subsequent telephone conference between you and Darrel Wiedeman of my staff on February 13, 2008, regarding Wang Engineering's conduct of moisture/density testing at the Hines Veterans Affairs (VA) Medical Center and the Westside VA Medical Center. These facilities are areas of exclusive federal jurisdiction within an Agreement State as delineated in 10 CFR 150.20(a)(1).

Based on the IEMA report, the telephone conference on February 13, 2008, and your letters to the NRC dated February 8 and 12, 2008, an apparent violation was identified and considered for escalated enforcement. The apparent violation involved your failure, as an Agreement State licensee, to file an NRC Form-241 within three days before engaging in licensed activities at facilities that were under exclusive federal jurisdiction during 2003, 2004, 2005, and 2007.

In our letter dated March 13, 2008, we provided you with the opportunity to address the apparent violation by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. You subsequently provided a written response in a letter dated March 24, 2008.

The NRC determined that a violation of NRC requirements occurred and the violation is cited in the enclosed Notice of Violation (Notice). During a routine IEMA inspection on February 5 and 7, 2008, the inspector identified that you used portable moisture/density gauges containing licensed material at the Jesse Brown (Westside) VA Medical Center in Chicago, Illinois during 2005 and 2007. The inspector informed you that licensed activities conducted at the medical center were not allowed under your State license, were the exclusive jurisdiction of the NRC, and required filing for reciprocity. On February 8, 2008, you retroactively filed for reciprocity for 2005 and 2007. Subsequently, you reviewed pre-2005 work orders and identified that you had conducted licensed activities at the Hines VA Medical Center in Hines, Illinois during 2003 and 2004. On February 12, 2008, you retroactively filed for reciprocity for 2003 and 2004. On February 15, 2008, you submitted payment of \$6000 to cover the past fees for four years. This was a violation of 10 CFR 150.20(b) (1) which requires, in part, that any person engaging in activities in areas of exclusive federal jurisdiction within Agreement States shall, at least 3 days before engaging in each such activity, file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

The root cause of the violation was that you were not aware of the federal jurisdictional status of the VA sites. The failure to file for reciprocity impacts the NRC's regulatory process by preventing the NRC from conducting inspections to assure that licensed material is being used safely and in accordance with NRC requirements, and is a significant regulatory concern. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3250 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit was warranted for your corrective actions which included retroactively filing for reciprocity and paying the required fees, updating your internal annual review process, informing your project management and field technicians on the need to file for reciprocity when working within a federal jurisdiction site, and, in the future, contacting the NRC for clarification if site jurisdiction is not clearly defined.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action, which may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to be taken to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in your letters dated February 8, February 12, and March 24, 2008. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (if you choose to respond) will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal

P. Wang

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privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

Please contact John Madera, Chief, Materials Inspection Branch, with any questions. Mr. Madera can be reached at telephone number (630) 829-9834.

Sincerely,

/RA by Mark A. Satorius Acting for/

James L. Caldwell
Regional Administrator

Enclosure:
Notice of Violation

cc: Daren Perrero, Illinois Emergency Management Agency

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Regional Administrator

Enclosure:
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cc: Daren Perrero, Illinois Emergency Management Agency

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Letter to Paul Y. Wang from James L. Caldwell dated April 18, 2008

SUBJECT: NOTICE OF VIOLATION – WANG ENGINEERING, INC.

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NOTICE OF VIOLATION

Wang Engineering, Inc.
Lombard, IL

EA-08-066

During NRC review of your letters dated February 8, February 12, and March 24, 2008, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

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, areas of exclusive federal jurisdiction within Agreement States, and in offshore waters, provided that the provisions of 10 CFR 150.20(b) have been met.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States, areas of exclusive federal jurisdiction within Agreement States, and in offshore waters, shall, at least 3 days before engaging in each such activity, file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, on numerous occasions during 2003, 2004, 2005 and 2007, Wang Engineering, Inc., a licensee of the State of Illinois, used portable moisture/density gauges containing licensed material at Department of Veteran Affairs (VA) construction sites; areas of exclusive federal jurisdiction in an Agreement State, without filing a Form-241 with the NRC. Specifically, the gauges were used 9 days during October 30 through November 26, 2003, and 31 days during January 7 through November 5, 2004, at Hines VA Medical Center in Hines, Illinois; and used 7 days during January 10 through March 17, 2005, and 18 days during January 22 through August 30, 2007, at Jesse Brown VA Medical Center in Chicago, Illinois.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to be taken to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in your letters dated February 8, February 12, and March 24, 2008. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-08-066," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator and the Enforcement Officer, Region III, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 18th day of April 2008