



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

Region III
2443 Warrenville Road, Suite 210
Lisle IL 60532-4352

May 14, 2013

EA-13-056

Mr. Robert J. Janssen
President & Principal Engineer
Braun Intertec Corporation
11001 Hampshire Ave S
Minneapolis, MN 55438

**SUBJECT: NOTICE OF VIOLATION – BRAUN INTERTEC CORPORATION
NRC REPORT NO. 15000022/2013001(DNMS)**

Dear Mr. Janssen:

This refers to a telephone conference that occurred between the U.S. Nuclear Regulatory Commission (NRC) and a member of your staff on February 19, 2013, concerning information that your company submitted on an NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters." The NRC also performed additional in-office review from February 19 to March 12, 2013, of documentation concerning the work your company performed at an area of exclusive Federal jurisdiction within an Agreement State. During the review, an apparent violation of NRC requirements was identified. The significance of the issue and the need for lasting and effective corrective actions were discussed with you at the final telephonic exit meeting on March 12, 2013. Details regarding the apparent violation were provided in NRC Report No. 15000022/2013001(DNMS) dated April 5, 2013.

In the letter transmitting the report, we provided you with the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. On April 18, 2013, you responded stating that the corrective actions taken were as stated in the NRC report.

Based on the information developed during the NRC review, the NRC has determined that a violation of NRC requirements occurred. Specifically, members of your staff possessed and used devices containing sealed sources of iridium-192 during 2012 and 2013 within the Fort Berthold Indian Reservation in North Dakota, an area of exclusive Federal jurisdiction within an Agreement State, and were not authorized by either a specific or general license as required under Title 10 of the Code of Federal Regulations (10 CFR) 30.3(a) or 10 CFR 150.20(a)(1). Your company did not file an amended NRC Form 241 or letter with the NRC Region III Regional Administrator to request approval for the work location that was different from the information contained on the initial NRC Form 241 as required by 10 CFR 150.20(b)(2). The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in our report dated April 5, 2013.

The root cause of the violation was that you were not aware that Indian Reservations were areas of exclusive federal jurisdiction. The failure to file for reciprocity impacted the NRC's regulatory process by preventing the NRC from conducting inspections to assure that licensed material was 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 \$3,500 is normally considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process described in Section 2.3.4 of the Enforcement Policy. Credit was warranted for your corrective actions which included training applicable staff that Indian Reservations are typically under Federal jurisdiction and require prior NRC reciprocity approval, submitting an NRC Form 241 for reciprocity approval for future work to be conducted at the Indian Reservation, posting maps that indicated areas of exclusive Federal jurisdiction, posting a list of Federal buildings, and committing to investigate planned work areas to verify if they are under exclusive Federal jurisdiction prior to initiating work at those areas.

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 that may subject you to increased effort.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation, and the date when full compliance was achieved, was adequately addressed on the docket in NRC Report No. 1500022/2013001(DNMS) dated April 5, 2013, and in your response dated April 18, 2013. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective action 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 provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, your response should not include any personal privacy, or proprietary, 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 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/.

Sincerely,

/RA/

Charles A. Casto
Regional Administrator

Docket No. 150-00022
License No. MN108210427

Enclosure:
Notice of Violation

cc w/encl: State of Minnesota
State of North Dakota
Jason Vickers,
Radiation Safety Officer

NOTICE OF VIOLATION

Braun Intertec Corporation
Minneapolis, Minnesota

Docket No. 150-00022
License No. MN108210427
EA-13-056

During a U.S. Nuclear Regulatory Commission (NRC) review conducted from February 19 to March 12, 2013, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the Code of Federal Regulations (10 CFR) 30.3(a) requires, in part, that except as provided in paragraphs (b)(2), (b)(3), (c)(2), and (c)(3) of this section and for persons exempt as provided in 10 CFR Part 30 and Part 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in 10 CFR.

10 CFR 150.20(a)(1) states, in part, that, provided that the provisions of 10 CFR 150.20(b) have been met, any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in areas of exclusive Federal jurisdiction within Agreement States.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in an area of exclusive Federal jurisdiction within an Agreement State shall, at least three days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee as prescribed in 10 CFR 170.31 with the Regional Administrator of the U.S. NRC Regional Office listed on the NRC Form 241 and in Appendix D to 10 CFR Part 20 for the Region in which the Agreement State that issued the license is located.

10 CFR 150.20(b)(2) requires that any person engaging in activities in an area of exclusive Federal jurisdiction within an Agreement State shall file an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

Contrary to the above:

1. On January 15, 16, 23, and 25, 2013, Braun Intertec Corporation (Braun Intertec), a licensee of the State of Minnesota possessed and used devices containing sealed sources of iridium-192 in an area of exclusive Federal jurisdiction within an Agreement State. At the time Braun Intertec was not authorized by either a specific or general NRC license and had not filed an NRC Form 241, a copy of its Agreement State specific license and the appropriate fee with the Regional Administrator of the U.S. NRC Regional Office in which the Agreement State that issued Braun Intertec's license was located. Specifically, Braun Intertec possessed and used the iridium-192 sources within the Fort Berthold Indian Reservation in North Dakota, an area of exclusive Federal jurisdiction within an Agreement State without filing an NRC Form 241,

Enclosure

submitting its Minnesota license or paying the appropriate fee to the Regional Administrator of the NRC Region III Office.

2. On April 16, July 31, October 11, and December 17, 2012, Braun Intertec possessed and used devices containing sealed sources of iridium-192 in an area of exclusive Federal jurisdiction within an Agreement State without filing an amended NRC Form 241 or letter with the NRC Region III Regional Administrator to request approval for the work location that was different from the information contained on the initial NRC Form 241. Specifically, Braun Intertec had filed an initial Form 241 for a non-Agreement State (South Dakota) on December 19, 2011, for 2012. Braun Intertec did not file an amended Form 241 when it possessed and used the iridium-192 sources within the Fort Berthold Indian Reservation in North Dakota, an area of exclusive Federal jurisdiction within an Agreement State.

This is a Severity Level III violation (Section 6.9).

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 the date when full compliance was achieved, is already adequately addressed on the docket in NRC Report No. 15000022/2013001(DNMS) dated April 5, 2013, and in your response dated April 18, 2013. 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-13-056," 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, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532 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, U.S. 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 Agencywide Documents Access and Management 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, or proprietary 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 of Violation within two working days of receipt.

Dated this 14th day of May, 2013

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 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/.

Sincerely,

/RA/

Charles A. Casto
Regional Administrator

Docket No. 150-000022
License No. MN108210427

Enclosure:
Notice of Violation

cc w/encl: State of Minnesota
State of North Dakota
Jason Vickers,
Radiation Safety Officer

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1 OE concurrence received via email from K. Day on May 9, 2013.

Letter to Robert J. Janssen from Charles A. Casto dated May 14, 2013

SUBJECT: NOTICE OF VIOLATION – BRAUN INTERTEC CORPORATION
NRC REPORT NO. 15000022/2013001(DNMS)

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