

BRAUNSM
INTERTEC

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September 12, 2000

direct 952.946.6116

Mr. William Borchardt
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Re: Reply to a Notice of Violation - Braun Intertec Corporation
Docket No. 030-21059
License No. 22-16537-02

Dear Mr. Borchardt,

Pursuant to the provisions of 10 CFR 2.201, Braun Intertec Corporation ("Braun Intertec") is providing this Reply to a Notice of Violation and Proposed Imposition of Civil Penalty dated August 14, 2000. The Notice of Violation contains an alleged violation of 10 CFR 34.41(a). For its Reply to the Notice of Violation, Braun Intertec Corporation states as follows:

1. Braun Intertec admits that it was in violation of 10 CFR 34.41(a) between January 12, 2000, and January 26, 2000, but objects to the escalation of the violation from a Severity Level IV to a Severity Level III violation and denies that its conduct constituted "careless disregard" on the part of Braun Intertec.
2. The reasons for the violation were discussed at the predecisional enforcement conference on July 11, 2000, in the Region III Office in Lisle, Illinois. The cause of the violation was that inaccurate information had been provided to Braun Intertec by its client and the previous service provider at that site.

In early December, 1999, while Braun Intertec was negotiating with its client to take over a radiography project, both the client and the previous service provider technician onsite told Braun Intertec's radiation safety officer ("RSO") that the two shielded rooms at the client's location had been licensed as permanent radiographic installations (PRIs) on the service provider's license. In mid-December, the RSO contacted the NRC licensing staff to determine how to modify Braun Intertec's

license to reflect the PRIs. The RSO was told that the PRIs could be transferred directly to the Braun Intertec license from the current service provider's license without submitting additional paperwork.

The issue of "careless disregard" or "willful" conduct centers around a telephone conversation between the Braun Intertec RSO and NRC licensing staff on January 12, 2000. At the time of that telephone call, both the NRC licensing staff and the Braun Intertec RSO realized that the shielded rooms had not been licensed on the previous service provider's license as PRIs.

It is the NRC's conclusion from this telephone conversation that the RSO "knew or should have known" that the shielded rooms were not licensed as PRIs and from that point forward they should have been operated as temporary field stations. However, the Braun Intertec RSO did not reach that conclusion based on the telephone conversation. The conversation between the NRC licensing staff and the RSO did not include a discussion on how to conduct operations at the site going forward, but rather on how to expedite the licensing process to license the shielded rooms as PRIs on Braun Intertec's license. To that end, the NRC licensing staff and the RSO discussed the information Braun Intertec needed to provide to complete the NRC's review, which was provided within three days.

Braun Intertec and the RSO cooperated at all times with the NRC regarding this issue. The licensing issue was raised by Braun Intertec prior to beginning work at the client's site. The RSO discussed how to proceed with NRC licensing staff and acted in accordance with the NRC's directions. While the failure to have two qualified individuals at each location was "discovered" during an NRC inspection, this is misleading since the RSO was well aware of the upcoming inspection and had discussed it with NRC personnel well before the inspection took place. The RSO simply believed, although incorrectly, that a process was in place with the NRC to complete the licensing process and that it was not necessary to operate the locations as temporary field stations.

The characterization of the Company's conduct as "careless disregard" or "willful" is not consistent with Braun Intertec's and the RSO's recent experience with the NRC licensing staff. As recently as November of 1999, a licensing issue was discovered during an NRC audit where a previously licensed facility had inadvertently been left off of the Braun Intertec license. After a series of discussions, Braun Intertec and the RSO were told to continue to operate at the facility as if it were correctly shown on the license while the paperwork was corrected. It is in the context of this recent event that the RSO was working during the licensing problems that arose around the two shielded rooms at issue here. Braun Intertec and the RSO assumed that they were dealing with a similar situation and in fact were dealing with a similar situation until January 12, 2000.

The failure of Braun Intertec and the RSO was in not recognizing that on January 12, 2000, the situation had changed from being a paperwork issue to a substantive issue. This failure in no way alters the fact Braun Intertec was in violation of 10 CFR 34.41(a) during the January 12 to January 26 time period. It is evident, however, that neither Braun Intertec nor the RSO acted with "careless disregard" or "willfully" to avoid NRC regulations. Braun Intertec and the RSO simply failed to recognize the significance of the change in status as of January 12.

The cover letter to the Notice of Violation and Proposed Imposition of Civil Penalty from J. E. Dyer, Regional Administrator, dated August 14, 2000, states, "This failure to conduct radiographic operations with two qualified individuals would be categorized as a Severity Level IV violation due to the low safety significance, since the areas appeared to meet the requirements of PRIs or would meet the requirements with minor modification or limitation on their use. However, the NRC is particularly concerned that the radiation safety officer willfully allowed radiographic operations to continue with only one qualified individual present." It is the finding of "willfully allowed" that escalates the Severity of the violation to Level III. Braun Intertec does not believe that it acted with "careless regard" or "willfully" based on the facts of this situation.

With respect to assessing significance, the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, Section IV.A.4. discusses "willfulness" and states, "Willfulness does not include acts which do not rise to the level of careless disregard, e.g., negligence or inadvertent clerical errors in a document submitted to the NRC." Braun Intertec was at worst negligent in not recognizing the change in circumstances on January 12. With respect to the specific factors to be considered pursuant to Section IV.A.4., the individual involved was the radiation safety officer, but the significance of the underlying violation was low. As noted above, the underlying violation was categorized as Severity Level IV by the NRC. The violator had no intent to violate NRC regulations and to the contrary was making every effort to comply with NRC regulations. The RSO was cooperative at all times, was responsive in providing information, initiated the licensing procedure and was at all times truthful and forthright in his dealings with all NRC personnel. Finally, neither the RSO nor Braun Intertec gained any economic or other advantage as result of the violation. Braun Intertec's contract with its client was a time and materials contract, not a fixed price contract. Braun Intertec was paid for each person at the client's site for each hour worked on site. In fact, Braun Intertec lost money by not operating the locations as temporary field stations until January 26.

While Braun Intertec recognizes that it was in violation of 10 CFR 34.41(a) from January 12, 2000, through January 26, 2000, it believes that the finding of "careless disregard" is in error and not supported by the facts.

Mr. William Borchardt

September 12, 2000

Page 4

3. Braun Intertec ceased radiography operations at the site upon notification from the NRC auditor on January 26, 2000, until two qualified individuals were present at each location. Braun Intertec has continued to operate the sites as temporary field sites while completing the licensing process with the NRC to license the locations as PRIs.
4. Braun Intertec has put in place a policy with respect to work at client sites to ensure that such work is treated as a temporary field station until Braun Intertec has received a revised license from the NRC listing the site as a licensed PRI. A copy of the policy is attached hereto as Exhibit A.
5. Full compliance was achieved on January 26, 2000.

Based on this response, Braun Intertec respectfully requests that the NRC Office of Enforcement reconsider its finding that Braun Intertec acted with "careless disregard."

Sincerely,



George D. Kluempke, PE
CEO/President

Attachment

cc: Mr. Marv Denne
Mr. Greg Ebeling
David Roland, Esq.

BRAUN INTERTEC CORPORATION

NDE Department Policy for Radiography Work:

All industrial radiographic operations will be performed in accordance with 10CFR part 34.41.

All facilities where radiographic operations are performed will be treated as temporary field stations requiring a 2-man radiography crew unless the Braun Intertec USNRC radioactive materials license has been amended and the facility or location has been added to the license as a permanent radiographic installation.