

July 22, 2002

EA-02-098

Mr. Bruce Corning
Vice President of Management Systems
Northern Engraving Corporation
803 S. Black River Street
Sparta, Wisconsin 54656

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3000 AND EXERCISE OF ENFORCEMENT DISCRETION (NRC SPECIAL
INSPECTION REPORT NO. 99990003/2002-001(DNMS))

Dear Mr. Corning:

This refers to the inspection conducted on April 19, 2002, to review the circumstances surrounding the loss of a static eliminator device. The loss of the device was reported to the NRC on April 12, 2002, by representatives of the State of Wisconsin. The inspection report was transmitted to Northern Engraving Corporation (Northern Engraving) on May 24, 2002. On June 6, 2002, a predecisional enforcement conference was conducted in the Region III office with you and other representatives of Northern Engraving to discuss the apparent violations, their significance, their root causes, and your corrective actions.

Based on the information developed during the inspection and the information that you provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are discussed herein, and two violations are cited in the enclosed Notice of Violation (Notice). The circumstances surrounding the violations are described in detail in the subject inspection report. On January 17, 2002, the NRC sent a notice to each Northern Engraving location believed to possess generally licensed devices subject to NRC registration, requesting you to correct, add to, or verify information about the devices. Your March 13, 2002, response indicated that Northern Engraving did not possess any generally licensed devices. This was not accurate, as several devices were still in your possession. Subsequently, on April 10, 2002, Northern Engraving transferred a generally licensed static eliminator containing 11.25 millicuries (0.4 gigabecquerels) of americium-241 from its Sparta, Wisconsin, facility, to an aluminum scrap hauler, who subsequently transferred the device to a scrap processor in La Crosse, Wisconsin. Neither the scrap hauler or processor were authorized to receive the radioactive material. The scrap processor found the device on April 11, 2002, when its radiation detectors alarmed. The scrap processor notified Northern Engraving and the State of Wisconsin of the alarm. A survey of the device for removable contamination indicated that a small amount of americium-241 contamination was present. The device's radioactive material surface had been slightly damaged when the scrap hauler removed a protective stainless steel grid from the device before transporting it to the scrap processor.

The root cause of the loss of the static eliminator was inadequate inventory control of generally licensed devices since approximately 1997 when Northern Engraving was divided into two companies, and the individual responsible for inventory control went with the other company. In addition, searches of your facilities, in response to NRC's registration requests, were not sufficiently comprehensive to identify all generally licensed devices that may still have been in your possession. Specifically, the static eliminator was not identified as being located at your Sparta, Wisconsin, facility, resulting in your March 13, 2002, response not accurately reporting that the generally licensed device was in your possession.

The failure to maintain adequate control over the generally licensed static eliminator, and to perform comprehensive searches of your facilities in response to NRC's registration requests, resulted in the device being damaged when it was improperly transferred to an aluminum scrap hauler, and subsequently transferred to a scrap processor, neither of whom were licensed to receive radioactive material. This is a significant safety issue since the device was found damaged in the public domain, where it had the potential to cause radiation exposure to members of the public. The NRC requirement for transferring generally licensed devices only to authorized recipients is intended to prevent members of the public from being unknowingly and unnecessarily exposed to radiation. In addition, while not willful, providing incomplete and inaccurate information to the NRC can prevent it from fulfilling its statutorily mandated mission of protecting public health and safety. Therefore, these violations have been categorized collectively in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III problem.

In accordance with the Enforcement Policy, a civil penalty is considered for a Severity Level III violation involving the loss of a device such as the static eliminator lost by Northern Engraving. 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 in Section VI.C.2 of the Enforcement Policy. Credit was warranted for corrective actions that included: (1) performing thorough searches of records and facilities for other devices in your possession; (2) procuring a radiation detector and requiring all scrap material to be surveyed when it both enters and exits Northern Engraving's scrap storage location; (3) offering a reward to employees who locate other devices; (4) making arrangements to transfer all generally licensed devices to authorized recipients and no longer use them in your facilities; and (5) committing to provide a corrected record in response to NRC's registration requests when you have completed a comprehensive search of your facilities and accounted for all your generally licensed devices.

Application of the normal civil penalty assessment process would not result in a civil penalty in this case. However, the revised Enforcement Policy published December 18, 2000, (effective February 16, 2001), provides that, notwithstanding normal application of the civil penalty assessment process, a civil penalty of at least the base amount should normally be proposed in this type of case to reflect the significance of the violation and to emphasize the importance of maintaining control of licensed material (see Section VII.A.1(g) of the Enforcement Policy). The base civil penalty values in the Enforcement Policy were developed to correspond to approximately three times the average cost of disposal. Normal application of the civil penalty assessment process, as reflected in Tables 1A.f.2 and 1B of the Enforcement Policy, would

result in a civil penalty of \$7500 in this case. The revised Enforcement Policy, however, also provides that civil penalties may be adjusted to better correspond to three times the actual expected cost of authorized disposal. You stated during the conference that the static eliminator's vendor would dispose of the device for approximately \$50. However, the NRC has concluded that a civil penalty amount less than the lowest base civil penalty of \$3000 is not sufficient to adequately emphasize the importance of maintaining control of radioactive material in the circumstances of this case. Therefore, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$3000 for the Severity Level III problem.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 99990003/2002-001(DNMS) and in this letter. Therefore, you are not required to respond to this Notice pursuant to the provisions of 10 CFR 2.201, unless the inspection report and this letter do 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.

Other violations of NRC requirements were identified during in-office review following the inspection and predecisional enforcement conference. These violations involved the unauthorized transfers of generally licensed devices. Specifically, you transferred the damaged static eliminator from the scrap dealer's facility in La Crosse, Wisconsin, and other generally licensed devices from your adhesive plant in Sparta, Wisconsin, and from your facilities in Waukon, Wisconsin, and Lansing, Iowa, to your main facility in Sparta, Wisconsin. The NRC considers each location of use a separate general licensee; therefore, because your main facility was not authorized to receive generally licensed devices from other Northern Engraving facilities, these transfers were violations of 10 CFR 31.5(c)(8)(i). The NRC determined that these violations were not willful, and that these transfers were done safely and in order to establish better control over the devices. In addition, the NRC was aware that the devices were being centrally collected in order to package them for return to the vendor. Therefore, we are exercising enforcement discretion as authorized by Section VII.B.6 of the NRC Enforcement Policy to refrain from issuing a Notice of Violation for these additional unauthorized transfers.

During the conference, the Northern Engraving representatives noted inaccuracies in Inspection Report 99990003/2002-001(DNMS). These inaccuracies are addressed in the Enforcement Conference Summary Report dated June 20, 2002.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response (should you choose to provide one) will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly

Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

J. E. Dyer
Regional Administrator

Docket No. 99990003
License No. General Licensee

Enclosures: 1. Notice of Violation and Proposed
 Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods
 (Licensee only)

*SEE PREVIOUS CONCURRENCE

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

Northern Engraving Corporation
Sparta, Wisconsin

Docket No. 99990003
License No. General Licensee
EA-02-098

During an NRC inspection conducted on April 19, 2002, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalties are set forth below:

- A. 10 CFR 31.5(c)(8)(i) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall transfer or dispose of the device containing byproduct material only by export as provided by paragraph (c)(7) of this section, by transfer to another general licensee as authorized in paragraph (c)(9) of this section, or to a person authorized to receive the device by a specific license issued under parts 30 and 32 of this chapter, or part 30 of this chapter that authorizes waste collection, or equivalent regulations of an Agreement State, or as otherwise approved under paragraph (c)(8)(iii) of this section.

Contrary to the above, on April 10, 2002, Northern Engraving Corporation (Northern Engraving) transferred an NRD static eliminator, Model A-2003, Serial No. 2374, containing 11.25 millicuries (0.4 gigabecquerels) of americium-241 to a person who was not authorized to receive the device by a specific license issued under parts 30 and 32 or equivalent regulations of an Agreement State, and the exceptions in 10 CFR 31.5(c)(7), 10 CFR 31.5(c)(9), and 10 CFR 31.5(c)(8)(iii) did not apply. Specifically, the device was transferred to an aluminum scrap hauler, who then transferred the device to a scrap processor. Neither the scrap hauler nor the scrap processor was licensed or authorized to receive the radioactive material.

- B. 10 CFR 31.2 states, in part, that general licenses provided in Part 31 are subject to the general provisions of 10 CFR 30.9.

10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects.

10 CFR 31.5(c)(13) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to the general license in this section, shall register annually with the Commission devices in its possession containing at least 1 millicurie (37 MBq) of americium-241, based on the activity indicated on the label. Registration must be done by verifying, correcting, and/or adding to the information provided in a request for registration received from the Commission. In registering devices, the general licensee shall furnish the address or location at which the device(s) are used and/or stored. Each address for a location of use represents a separate general licensee and requires a separate registration.

In a registration request, dated January 17, 2002, the NRC asked Northern Engraving to correct, add to, or verify information about the generally licensed devices currently or formerly in its possession at its Sparta, WI facility.

Contrary to the above, the licensee failed to provide the Commission with information that was complete and accurate in all material respects. Specifically, Northern Engraving's March 13, 2002, response to NRC's January 17, 2002, registration request was not complete or accurate because it did not include an NRD Model A-2003 static eliminator, Serial No. 2374, containing 11.25 millicuries (0.4 gigabecquerels) of americium-241 as an additional device it possessed at its Sparta, Wisconsin, facility. Northern Engraving possessed the static eliminator at its Sparta facility until April 10, 2002, when it was transferred to a scrap hauler. The information was material because the NRC relied on the information provided in response to its registration request to determine if Northern Engraving possessed any devices that are subject to increased regulatory oversight and annual registration with the NRC.

This is a Severity Level III problem (Supplement VI).
Civil Penalty - \$3000

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 99990003/2002-001(DNMS) and the letter transmitting this Notice. 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," 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, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

The Licensee may pay the civil penalty proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Frank Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, IL 60532-4351.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room). 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.

Dated this 22nd day of July 2002.