

February 24, 2005

EA 04-235

Mr. Dennis C. Chambers, P.E.
Vice President
Triad Engineering, Inc.
P.O. Box 889
Morgantown, WV 26505

SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Chambers:

This letter refers to the routine unannounced NRC inspection conducted on May 5, 2004, at your facilities in Harrisonburg and Winchester, Virginia. During the inspection, the NRC determined that in November 2003, a Troxler portable density gauge containing radioactive material (cesium-137 and americium-241) was transferred from your Harrisonburg facility to an individual not authorized to receive or possess the gauge, in violation of 10 CFR 30.41(c). The results of the inspection were discussed with Mr. Roger Simar of your staff during an exit meeting following the inspection on May 5, 2004, and by phone during subsequent conversations on May 14, May 24, and May 26, 2004.

This letter also refers to an investigation completed by the NRC's Office of Investigations (OI) on November 30, 2004. The purpose of the OI investigation was to determine whether your radiation safety officer transferred the portable gauge knowing that the individual was not authorized to receive it, in violation of NRC regulations. Based on the results of the investigation, there was insufficient evidence to substantiate that this violation was willful.

On January 19, 2005, we sent you a letter which contained the inspection report and a factual summary of the OI investigation. Our letter discussed the apparent violation. Our letter also informed you that the NRC was considering escalated enforcement action in accordance with its enforcement policy and you were provided an opportunity to either respond in writing to this apparent violation or request a predecisional enforcement conference.

In a telephone conversation on January 20, 2005, you informed Mr. John Kinneman of my staff, that you did not believe that a predecisional enforcement conference was needed, but that you would provide a written response. In your response, dated February 15, 2005, you admitted that your radiation safety officer transferred the gauge containing licensed radioactive material to an individual not authorized to receive or possess the gauge, and you acknowledged that these actions resulted in Triad Engineering being in violation of NRC regulations.

Although there is no evidence that members of the public came into direct contact with the gauge during the time this violation existed, this violation is of concern to the NRC because (1) the failure to control gauges containing radioactive material could result in the loss or theft of the material, and (2) unintended radiation doses to members of the public could occur if the sources were to be in the unshielded position. Therefore, this violation is categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,000 is considered for a Severity Level III violation. Your facility has been the subject of escalated enforcement action within the last two years. Specifically, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 (Reference EA-04-014), was issued on April 20, 2004 for failure to control or maintain constant surveillance of a portable density gauge in an unrestricted area. Therefore the NRC considered whether credit was warranted in the subject case for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for Identification is not warranted because the NRC identified the violation during a routine, unannounced inspection. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included, but were not limited to: (1) immediately securing the nuclear gauges and returning them to your Harrisonburg facility; (2) informing appropriate members of your staff of the violation and reinforcing management's expectation to comply with all NRC rules and regulations; (3) taking disciplinary action against the responsible RSO; and (4) issuing a company memo to Triad radiation safety officers that documented proof of authorization is required before a gauge is released in the future.

Since credit was not warranted for identification, a civil penalty would normally be issued for such a violation. However, after consultation with the Director, Office of Enforcement, I have been authorized to exercise enforcement discretion and not issue a civil penalty in this case in accordance with the exercise of enforcement discretion process in Section VII.B.6 of the Enforcement Policy. In making this decision, the NRC took into consideration that (1) this violation was not willful; (2) was unrelated to the willful violations that were the subject of the April 2004 civil penalty which involved failure to maintain constant surveillance and control of a portable nuclear gauge in an unrestricted area; (3) occurred in November 2003 which was the same time frame as the violations that were the subject of the April 2004 civil penalty; and (4) corrective actions implemented in response to these violations have demonstrated program improvement. However, you should be aware that significant violations in the future could result in a civil penalty. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reasons 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 this letter, in the inspection report issued on January 19, 2005, and in your February 15, 2005, response. Therefore, you are not required to respond to this violation unless the description herein 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.

Mr. Dennis C. Chambers

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, 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 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/adams.html> (the Public Electronic Reading Room). 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. The NRC also includes significant enforcement actions on its web site at <http://www.nrc.gov>; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/ JWiggins for

Samuel J. Collins
Regional Administrator

Docket No. 030-13255
License No. 47-17742-01

Enclosure: Notice of Violation

cc w/encls:
State of Virginia
State of West Virginia
State of Maine

Mr. Dennis C. Chambers

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ENCLOSURE 1

NOTICE OF VIOLATION

Triad Engineering, Inc.
Morgantown, WV

Docket No. 030-13255
License No. 47-17742-01
EA 04-235

Based on an NRC inspection conducted on May 5, 2004, and a subsequent investigation completed by the NRC's Office of Investigations on November 30, 2004, a violation of NRC requirements was identified. The violation was discussed with the licensee during an exit meeting following the inspection on May 5, 2004, and in subsequent telephone conversations on May 14, May 24, and May 26, 2004. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violation is set forth below:

10 CFR 30.41©) states that, before transferring byproduct material to a specific licensee of the Commission or Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the byproduct material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred.

Contrary to the above, in November 2003, the licensee transferred a portable gauge (containing 11 millicuries of cesium-137 and 40 millicuries of americium-241) from its facility in Harrisonburg, Virginia, to Universal Calibrations in Westbrook, Maine, which was not licensed to receive the type, form, and quantity of byproduct material transferred.

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

The NRC has concluded that information regarding the reasons 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 the letter transmitting this Notice, in NRC Inspection Report No. 030-13255/2004-001 issued on January 19, 2005, and in the licensee's February 15, 2005 response. 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 05-005" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest the violation, 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.

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 24th day of February 2005