

June 27, 2005

EA 05-092

Joseph Hughes
President/RSO
David Blackmore & Associates
3335 West Ridge Pike
Pottstown, PA 19464

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 03036556/2005002)

Dear Mr. Hughes:

This letter refers to the NRC safety inspection conducted at your temporary job site located on Egypt Road in Upper Providence Township, Pennsylvania, on April 5 and 11, 2005. The inspection was limited to a review of the circumstances associated with the damage to an unattended portable nuclear gauge on April 5, 2005. The gauge, which contained approximately 10 millicuries of cesium-137 and 50 millicuries of americium-241, was damaged when it was run over by a bulldozer after an authorized gauge operator had left it unattended for approximately 10 minutes at the job site. The results of the inspection were discussed with you and members of your staff during an exit meeting on April 11, 2005, at the conclusion of the inspection.

Based on the inspection, one apparent violation of NRC requirements was identified involving the failure by the authorized gauge operator to control and maintain constant surveillance of the gauge. The apparent violation was described in the NRC inspection report sent to you with our letter dated June 1, 2005. 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 address our concerns at a predecisional enforcement conference. On June 16, 2005, a predecisional enforcement conference (PEC), open for public observation, was conducted with you to discuss the apparent violation, its causes, and your corrective actions. At this conference, you admitted that the violation occurred and provided the corrective actions you have taken or plan to take in response to this violation. A summary of the enforcement conference is enclosed.

In this case, the damage to the gauge did not result in removal of the source from its shielded position, nor did it cause any leakage from the source. Furthermore, it was unlikely that unauthorized persons came into direct contact with the material during the time that it was unattended. Nonetheless, this violation is of concern to the NRC because (1) the failure to control 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 source was removed from its shielded 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).

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,000 is considered for a Severity Level III violation involving the loss of control of radioactive material with this level of radioactivity. Because your facility has not been the subject of escalated enforcement action within the last two years or 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 for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions were provided to the NRC at the June 16, 2005, PEC, and included, but were not limited to: (1) immediately restricting access to the immediate area around the damaged gauge in the event there was any contamination, as well as to prevent any exposure to members of the public; (2) returning the damaged gauge to the manufacturer for repairs; (3) re-instructing all company gauge operators in the licensee's security requirements for the use of gauges; (4) discussing the event with employees and conducting additional training regarding safety of licensed material; and, (5) performing unannounced site visits to inspect performance of gauge operators.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation for the Severity Level III violation with no civil penalty. 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, and in the inspection report issued on June 1, 2005. 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. We appreciate your cooperation with us in this matter.

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).

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

David Blackmore & Associates

3

Docket No. 030-36556

License No. 37-28297-02

Enclosures

1. Notice of Violation
2. Enforcement Conference Report

cc w/encl:

Commonwealth of Pennsylvania

Distribution w/encls:

ADAMS (PARS)
 SECY
 CA
 OEMAIL
 OEWEB
 LReyes, EDO
 MVirgilio, DEDMRS
 MJohnson, OE
 SFiguroa, OE
 LChandler, OGC
 JMoore, OGC
 MEIwood, OGC
 KRemsberg, OGC
 JStrosnider, NMSS
 CMiller, NMSS
 WOutlaw, OCM
 MCheck, RES
 CMiller, OEDO
 GMorell, NMSS
 Enforcement Coordinators RII, RIII, RIV
 SGagner, OPA
 HBell, OIG
 PLohaus, STP
 GCaputo, OI
 LTremper, OC
 DScrenci/NSheehan, RI
 GPangburn, RI
 FCostello, RI
 SMinnick, RI SAO
 State Agreement Officers RII, RIV
 JKinneman, RI
 KFarrar, RI
 DHolody, RI
 JWray, RI
 DCorlew, RI
 Region I OE Files (with concurrences)

SISP Review Complete: FMC (Reviewer's Initials)

DOCUMENT NAME: E:\Filenet\ML051780405.wpd

After declaring this document "An Official Agency Record" it **will** be released to the Public.

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	RI/ORA	RI/ORA	RI/RC	RI/DNMS	RI/DNMS
NAME	JWray (JRW)	DHolody (DJH)	KFarrar (KLF)	JKinneman (SL)	GPangburn (GCP)
DATE	6/22/05	6/24/05	6/23/05	6/22/05	6/22/05
OFFICE	RI/RA				
NAME	SCollins (SJC)				
	6/24/05				

ENCLOSURE

NOTICE OF VIOLATION

David Blackmore & Associates
Pottstown, Pennsylvania

Docket No. 030-36556
License No. 37-28297-02
EA 05-092

During an NRC inspection conducted on April 5 and 11, 2005, for which an exit meeting was held on April 11, 2005, one violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), the violation is listed below:

10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on April 5, 2005, the licensee did not control and maintain constant surveillance of licensed material (50 millicuries of americium-241 and 10 millicuries of cesium-137) contained in a CPN Model MC1-DRP portable density gauge that was being used in an unrestricted area at a construction site in Upper Providence, PA. Specifically, the gauge user left the gauge unattended for approximately 10 minutes while he went behind a mound of soil to speak with site personnel. During the time period that the gauge was not in direct line of sight with the operator, the gauge was damaged when it was run over by a bulldozer.

This is a Severity Level III violation (Supplement VI)

The NRC has concluded that information regarding the reason for the violation, and the corrective actions taken and planned to correct the violation and prevent recurrence are already adequately addressed on the docket in the inspection report issued on June 1, 2005, as well as the NRC letter transmitting this Notice. Therefore, no response to this Notice is required. 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 05-092" 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 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.

If you choose to respond, your response will be placed in the NRC Public Document Room (PDR). Therefore, to the extent possible, the response should not include any personal privacy or proprietary information so that it can be placed in the PDR without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

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

Dated this 27th day of June 2005

CONFERENCE SUMMARY

David Blackmore & Associates
NRC Enforcement Conference Report No. 03036556/2005002

A Predecisional Enforcement Conference was held on June 16, 2005, with David Blackmore & Associates (the licensee) to discuss the findings of the inspection that was conducted in response to an event that occurred on April 5, 2005, at the licensee's temporary job site. The conference was open to members of the public but no member of the public attended the conference.

Mr. George Pangburn made the opening remarks and briefly described the purpose of the conference. Mr. Richard Urban explained the NRC enforcement process. Mr. John Kinneman explained the importance of security of licensed material and expectations of the NRC from the licensees in this regard. Sattar Lodhi asked the licensee to identify any errors or misstatements in the report of the inspection, and then reviewed the inspection findings and the apparent violation of 10 CFR 20.1802, that was identified during the inspection.

The meeting was turned over to Mr. Hughes (the President). The President stated that they did not find any errors or misstatements in the report. He stated that in response to a similar violation that had occurred in the past, they implemented corrective actions that should have prevented a recurrence of the violation, but complacency on the part of personnel and judgement error contributed to the incident on April 5, 2005. The President stated that all gauge users have been provided additional training in the security of licensed material, and described the additional procedures that have been implemented to prevent recurrence of a similar incident in the future. These procedures included unannounced visits to temporary job sites by members of the management to verify that gauge users are following the operating procedures. He also stated that such visits will also ensure that gauge users do not become complacent.

Mr. Urban then summarized Enforcement Policy and Procedures for NRC Enforcement Actions including the enforcement options available to the NRC.

In his closing remarks, Mr. Pangburn thanked the President for attending the conference. The conference was then adjourned.

LIST OF PERSONS ATTENDING

Licensee:

Joseph Hughes, President /RSO

NRC:

George Pangburn, Director, Division of Nuclear Materials Safety

John D. Kinneman, Chief, Materials Security & Industrial Branch

Sattar Lodhi, Senior Health Physicist

Richard Urban, Senior Enforcement Coordinator, Region I

Karl Farrar, Regional Counsel, RI

Sally Merchant, Office of Enforcement

Gregory Morell, NMSS