

July 12, 2005

EA 05-132

William H. Briody  
Vice President/Corporate RSO  
Froehling and Robertson, Inc.  
3015 Dumbarton Road  
Richmond, VA 23228

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 03006580/2005001)

Dear Mr. Briody:

This refers to the NRC inspection conducted on June 1, 2005, at your facility located in Crozet, Virginia, as well as a temporary job site in Waynesboro, Virginia, to review the circumstances associated with the damage of one of your portable nuclear density gauges on May 17, 2005, at another temporary job site in Charlottesville, Virginia. The gauge, which contained NRC licensed radioactive material, was damaged when it was run over by a sheepsfoot roller after an authorized gauge operator had left it unattended for approximately 10 minutes at the job site. The enclosed inspection report documents the findings of the inspection, which were discussed with you and members of your staff during an exit meeting on June 1, 2005, at the conclusion of the inspection.

Based on the findings from the inspection, the NRC has determined that a violation of NRC requirements occurred. The violation, which is cited in the enclosed Notice of Violation (Notice), involves the failure to secure, control or maintain constant surveillance of the portable nuclear gauge containing NRC licensed material. On July 7, 2005, Mr. John Kinneman of my staff informed you that this violation was being considered for escalated enforcement action, and the NRC did not need any additional information to make an enforcement decision. However, Mr. Kinneman provided you an opportunity to attend a predecisional enforcement conference or to provide a written response, prior to the NRC determining appropriate enforcement action. During this conversation, you declined the opportunity to attend a conference or to provide a written response.

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 \$3,250 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, which you described during the inspection, 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; and (4) scheduling a discussion of the event with employees at the next company safety meeting.

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 enclosed inspection report. 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.

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).

We appreciate your cooperation with us in this matter.

Sincerely,

*/RA/*

Samuel J. Collins  
Regional Administrator

Froehling and Robertson, Inc.

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Docket No. 030-06580

License No. 45-08890-02

Enclosures

1. Notice of Violation
2. NRC Region I Inspection Report No. 030-06580/2005-001

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State of Virginia

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NAME	JWray	JKinneman	GPangburn	DHolody	KFarrar
DATE	07-11-05	07/12/05	07/12/05	07/12/05	07/12/05
OFFICE	RI/ORA				
NAME	SCollins				
	07/12/05				

ENCLOSURE

NOTICE OF VIOLATION

Froehling and Robertson, Inc.  
Richmond, Virginia

Docket No. 030-06580  
License No. 45-08890-02  
EA 05-132

During an NRC inspection conducted on June 1, 2005, a violation of NRC requirements was identified, and was discussed during an exit meeting on that date. 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 May 17, 2005, the licensee did not control and maintain constant surveillance of licensed material contained in a Troxler Model 3411 portable density gauge that was being used in an unrestricted area at a temporary job site in Charlottesville, VA. Specifically, the gauge user left the gauge unattended for approximately 10 minutes while he watched mixed fill being placed and compacted in a trench. 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 sheepsfoot roller.

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 NRC letter transmitting this Notice and its related inspection report. 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.

## Notice of Violation

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 12th day of July 2005