

August 5, 2005

EA 05-109

Mr. Michael Cannan, President
Craig Testing Laboratories, Inc.
P. O. Box 427
5439 Harding Highway
Mays Landing, NJ 08330

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF
CIVIL PENALTY - \$3,250 (NRC Inspection Report No. 030-14353/2005-001)

Dear Mr. Cannan:

This refers to the NRC reactive inspection conducted on April 27, 2005, at your facility located in Mays Landing, New Jersey, as well as near a temporary job site in Pocopson, Pennsylvania, to review the circumstances associated with the loss of one of your portable gauging devices. The nuclear gauge contained NRC licensed radioactive material. You reported this gauge missing to the NRC by telephone on April 25, 2005, and you followed up that verbal report with a letter dated May 22, 2005, wherein you described corrective actions taken to prevent recurrence. As described in the NRC inspection report sent to you on June 2, 2005, three apparent violations of NRC requirements were identified during the NRC inspection and were being considered for escalated enforcement in accordance with the NRC Enforcement Policy.

In the letter transmitting the inspection report, the NRC informed you that a predecisional enforcement conference, open for public observation, was scheduled for June 23, 2005. The conference was held to discuss the apparent violations. At the conference, you (1) acknowledged the facts surrounding the event as presented in the inspection report, (2) stated that Craig Testing Laboratories takes the security of licensed material very seriously, and (3) described your actions to recover the lost gauge and your corrective actions to preclude recurrence of this event.

Based on the information developed during the inspection, and the information provided by you during the conference, the NRC has determined that three violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations occurred, in part, when the authorized gauge user failed to adequately lock the transport case onto the bed of his truck and failed to secure the tailgate. After driving for approximately two miles from the temporary job site, the authorized gauge user determined that the case containing the device had fallen off the truck, opened, and the device itself was missing. When he retraced his route, he was unable to locate the gauging device because it had been found and taken to a private residence by a member of the public.

The failure to control or maintain constant surveillance of licensed material that was in an unrestricted area and was not in storage constituted the first violation. The failure to ensure that a portable nuclear density gauge or its outer container was locked constituted the second violation. The third violation involved the failure to comply with the applicable requirements of the Department of Transportation regulations, examples of which include failure to properly block and brace a package during transport, failure to transport radioactive material with the required information on the labels, and failure to store the shipping paper within the immediate reach of the driver during transport.

Although the source was in the shielded condition at the time the gauge was found by the member of the public, these violations are of concern to the NRC because (1) the failure to control radioactive material resulted in the gauge being in the public domain for approximately five days; and (2) such sources can result in unintended radiation exposure to an individual if the source is not in the shielded position. Therefore, these violations are categorized collectively as a Severity Level III problem in accordance with the 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 problem involving the loss of radioactive material with an activity level similar to the activity level of the sources contained in this portable gauging device. Craig Testing Laboratories has been the subject of an escalated enforcement action within the last two inspections. Specifically, a Notice of Violation was issued to Craig Testing Laboratories on September 30, 2002, for a Severity Level III violation involving the failure to maintain control of a similar nuclear gauge which resulted in damage to the gauge (Reference: EA 02-177). Therefore, NRC considered whether credit was warranted 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 violations were identified as a result of an event, and not because of any special self-monitoring effort by your management or staff. 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 notifying all appropriate authorities of the missing gauge; (2) retrieving the gauge from the member of the public who found it and took it to his residence before notifying you of its whereabouts; (3) re-instructing all company nuclear gauge operators regarding the proper security and handling procedures for NRC licensed material; and (4) increasing required Radiation Safety Officer visits to job sites to ensure compliance with regulatory requirements.

Therefore, notwithstanding your corrective actions, given the referenced prior escalated enforcement action to Craig Testing, as well as the fact that these violations were identified as a result of an event, 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 in the base amount of \$3,250 for the violations set forth in the Notice. This action is being issued to emphasize the significance of adequately maintaining control of licensed material. But for your corrective actions, the civil penalty amount would have been higher. In addition, issuance of this Notice constitutes escalated enforcement action, that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you may reference any previous correspondence that is applicable to this case to avoid repetitive submissions.

Mr. Michael Cannan

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The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and 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/NRC/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Docket No. 03014353
License No. 29-18018-01

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)
3. Enforcement Conference Summary Report

cc w/encl:
State of New Jersey
Commonwealth of Pennsylvania

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OFFICE	RI/DNMS	RI/DNMS	RI/RC	RI/ORA	RI/ORA
NAME	JKinneman	GPangburn	KFarrar out of office	JWray	DHolody
DATE	07/05/05	07/06/05		07/01/05	07/07/05
OFFICE	RI/RA	OE	NMSS	OGC	
NAME	SCollins	MJohnson	GMorell	TSmith	
	07/07/05	08/02/05	07/26/05	08/01/05	

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OE, NMSS, OGC concurrences confirmed based on email AHayes to JWray on 8/2/05

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Craig Testing Laboratories, Inc.
Mays Landing, New Jersey

Docket No. 03014353
License No. 29-18018-01
EA 05-109

During an NRC inspection conducted on April 25, 2005, three violations of NRC requirements were identified. In accordance with the Enforcement Policy, the NRC proposes 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 violations and associated civil penalty are set forth below:

- A. 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, an *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on April 25, 2005, near a temporary job site in Pocopson, Pennsylvania, the licensee failed to control and maintain constant surveillance of a Troxler Model 3430 portable gauge containing NRC licensed radioactive material. Specifically, during transport on that date, the unsecured portable gauge fell off the transport vehicle and was lost on a public highway, which was an unrestricted area.

- B. Condition 17 of License No. 29-18018-01 requires that each portable nuclear gauge shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The gauge or its container must be locked when in transport, storage or when not under the direct surveillance of an authorized user.

Contrary to the above, on April 25, 2005, near a temporary job site in Pocopson, Pennsylvania, the licensee's portable nuclear gauge and its transport case were not locked during transport.

- C. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

1. 49 CFR 172.403 requires, in part, with exceptions not applicable here, that each package of radioactive material be labeled, as appropriate, with two RADIOACTIVE WHITE-1, RADIOACTIVE YELLOW-II, or RADIOACTIVE YELLOW-III labels on opposite sides of the package. The contents, activity, and transport index must be entered in the blank spaces on the label.

Contrary to the above, on April 25, 2005, near a temporary job site in Pocopson,

Pennsylvania, a carrying case used to transport a portable gauge containing NRC licensed radioactive material on a public highway had one label which did not list the transport index, and a second label which did not list the radionuclides, their respective activities, or the transport index.

2. 49 CFR 177.817(e)(2)(I) requires that when the driver is at the vehicle's controls, the shipping paper shall be within immediate reach while restrained by the lap belt; and either readily visible to a person entering the driver's compartment or in a holder which is mounted to the inside of the door on the driver's side of the vehicle.

Contrary to the above, on April 25, 2005, near a temporary job site in Pocopson, Pennsylvania, the licensee failed to store the shipping paper within the immediate reach of the vehicle driver during transport.

3. 49 CFR 177.842(d) requires that packages must be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on April 25, 2005, near a temporary job site in Pocopson, Pennsylvania, the licensee transported a portable gauge containing NRC licensed radioactive material on a public highway, and at the time, the transport case was not properly blocked and braced. Specifically, the portable gauge was placed in an unlocked transport case then attached to the vehicle with one chain. Since the chain was not tightened, the transport case was able to move freely around the truckbed. The driver also failed to close the tailgate. While the vehicle was in transit, the transport case fell off the vehicle onto a public highway, and the gauge became dislodged from the case.

This is a Severity Level III problem (Supplements IV, V, and VI)

Civil Penalty - \$3,250

Pursuant to the provisions of 10 CFR 2.201, Craig Testing Laboratories, Inc. is required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown.

Within the same time as provided for the response required above under 10 CFR 2.201, 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, 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: M. Johnson, 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 I.

Because 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), to the extent possible, it should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Reading Room). If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

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

Dated this 5th day of August 2005

CONFERENCE SUMMARY

NRC Enforcement Conference Report No. 03014353/2005001

On June 23, 2005, representatives of Craig Testing Laboratories met with NRC Management in the Region I office located in King of Prussia, Pennsylvania, to discuss the findings of the inspection described in NRC Inspection Report 03014353/2005001, and the apparent violations included in the report.

Mr. George Pangburn made the opening remarks and briefly described the purpose of the conference. Mr. John Wray explained the NRC enforcement process, and described the apparent violations, including the licensee's failure to control or maintain constant surveillance of licensed material that was in an unrestricted area. Mr. Sattar Lodhi asked the licensee to identify any errors or misstatements in the report of the inspection, and then explained NRC's concern for the security of licensed material and expectations of the NRC from licensees in this regard.

The licensee agreed with the contents of the inspection report and addressed the current and past violations related to security and control of licensed material. The licensee stated that it takes the security of licensed material very seriously. The licensee then described the actions it had taken to recover the lost gauge, and discussed the corrective actions that have been implemented to ensure security of licensed material and to prevent a recurrence of the incident in the future.

Mr. Wray 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 licensee for attending the conference. The conference was then adjourned.

LIST OF PERSONS ATTENDING

Licensee

Michael Cannan, President

Ian Craig, Radiation Safety Officer

NRC

George Pangburn, Director, Division of Nuclear Materials Safety

Christiana Lui, Deputy Division Director, Division of Reactor Projects

Sattar Lodhi, Senior Health Physicist, Materials Security and Industrial Branch

Craig Gordon, Senior Health Physicist, Materials Security and Industrial Branch

Donna Janda, Health Physicist, Materials Security and Industrial Branch

Karl Farrar, Regional Counsel, Office of the Regional Administrator

John Wray, Enforcement Specialist, Office of the Regional Administrator

Audrey Hayes, Enforcement Specialist, Office of Enforcement (via teleconference)