

May 22, 2007

IA-07-010

John M. Branyan

HOME ADDRESS DELETED

UNDER 10 CFR 2.390(a)

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 03033387/2006001 and Investigation Report No. 1-2006-027)

Dear Mr. Branyan:

This refers to an inspection conducted on March 7, 23, and 28, 2006, as well as a subsequent investigation by the NRC's Office of Investigations (OI) completed on August 15, 2006, at U.S. Engineering Laboratories, Inc. (USEL) in Rahway, NJ and Broomall, PA. The inspection and investigation were conducted, in part, to determine whether you, employed by USEL as an Assistant Radiation Safety Officer at the time, deliberately failed to report a Troxler portable gauge as lost or missing when the location of the gauge was unknown between at least October 2005 and March 2, 2006.

In a letter to you dated March 8, 2007, we informed you that we had concluded that you had apparently violated 10 CFR 30.10, "Deliberate misconduct". Specifically, you apparently deliberately failed to report the missing gauge, thereby causing USEL to violate 10 CFR 20.2201, which requires, in part, that the licensee immediately report any lost, stolen or missing licensed material in an aggregate quantity equal to or greater than 1000 times the quantity specified in Appendix C to Part 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas. Our letter of March 8, 2007, also provided you with a copy of our letter issued to USEL on the same date, and a Factual Summary of OI Investigation No. 1-2006-027. Finally, our March 8, 2007, letter offered you an opportunity to: (1) attend a pre-decisional enforcement conference (PEC); (2) submit a written response to the NRC; or, (3) participate in Alternate Dispute Resolution (ADR), in response to our disposition of the violation.

To date, we have not received any response from you, despite (1) sending you our March 8, 2007, letter, (2) Marie Miller, Chief of the NRC Region I Materials Security and Industrial Branch, attempting to contact you by leaving messages on your home answering machine on March 19, 2007, and March 31, 2007, and (3) Marie Miller leaving a message on your cell phone on April 10, 2007. Since you have not responded to our repeated contacts, and did not request an opportunity to attend a PEC or submit a written response, the NRC is proceeding with enforcement action against you based on the inspection and investigation findings.

Based on the inspection and investigation, the NRC staff has concluded that you violated 10 CFR 30.10, "Deliberate misconduct". The violation is cited in the enclosed Notice of Violation (Notice) (Enclosure 1). 10 CFR 30.10 requires, in part, that an employee of a licensee may not engage in deliberate misconduct that causes a licensee to violate any regulation or any license

issued by the Commission. Specifically, you deliberately failed to report a missing gauge, thereby causing USEL to violate 10 CFR 20.2201. You knew that the location of a Troxler portable gauge, containing americium-241 (Am-241) was unknown, and that USEL was required to report immediately to the NRC that the gauge was missing. However, you did not report the loss of the gauge. The NRC has also issued an enforcement action to USEL, and a copy of that action is enclosed. (Enclosure 2)

In evaluating the significance of the violation, the NRC considered that there were no health or safety consequences to the public because the gauge was intact, and both the gauge and the transport container were locked when found. However, because the gauge was abandoned in an unrestricted area for a significant period of time, the potential existed for exposure to members of the public if the source had been removed from the shielded position, and the potential also existed for contamination if someone tried to tamper with the sealed source. In addition, a deliberate failure to make the required notification impacts the regulatory process, because timely notifications of events enable the NRC as well as licensees to implement necessary actions to ensure public safety. In accordance with the Enforcement Policy, Supplement IV, the violation has been classified as Severity Level III.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an order prohibiting your involvement in NRC-licensed activities because of your actions. However, after consultation with the Director, Office of Enforcement, and after considering the circumstances of this case, including the facts that: (1) the actual safety significance was low because there were no actual health or safety consequences to the public as the gauge was found intact; and, (2) you are no longer employed at USEL, I have decided to issue the enclosed Notice of Violation. You should be aware that if you engage in any deliberate violations of NRC requirements in the future, it could result in more significant NRC enforcement action, as well as criminal prosecution.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements. 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.

Alternatively, you may request Alternate Dispute Resolution (ADR) with the NRC in an attempt to resolve the issues. If you request ADR in an attempt to resolve the issues, you will need to contact the Institute on Conflict Resolution (ICR) at 877-733-9415 within 10 days of the date of this letter. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program, which is now in effect, is mediation. Additional information concerning NRC's pilot program is described in the brochure (NUREG/BR-0317) that was provided to you in our March 8, 2007 letter, and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The ICR at Cornell University has agreed to facilitate the NRC's program as an intake neutral.

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 NRC's document system (ADAMS), accessible from

the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov>.

In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Please feel free to contact Marie Miller of my staff at 610-337-5205 if you have any questions.

Sincerely,

/RA/ Original Signed by Marc Dapas for

Samuel J. Collins
Regional Administrator

Enclosures: 1. Notice of Violation
2. Notice of Violation and Imposition of Civil Penalty to USEL

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NOTICE OF VIOLATION

John M. Branyan
**[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(a)]**

IA-07-010

During an NRC investigation by the Office of Investigations (OI), completed on August 15, 2006, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.10 requires, in part, that an employee of a licensee, may not engage in deliberate misconduct that causes, or would have caused, if not detected, a licensee to be in violation of any regulation or any license issued by the Commission.

10 CFR 20.2201 (a) (1) requires the licensee to immediately report any lost, stolen or missing licensed material in an aggregate quantity equal to or greater than 1000 times the quantity specified in Appendix C to Part 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas.

Contrary to the above, beginning no later than October 1, 2005, and lasting until March 2, 2006, you engaged in deliberate misconduct which caused the licensee (U.S. Engineering Labs, Inc.) to violate NRC regulations. Specifically, as an Assistant Radiation Safety Officer (ASRO), you did not report the loss of a Troxler portable gauge, Serial No. 9524 which contained Appendix C quantities of americium-241 (Am-241), even though you knew, no later than October 2, 2005, that the gauge could not be accounted for.

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

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 475 Allendale Rd., King of Prussia, PA 19406, and marked "Open by Addressee Only", within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; IA-07-036" and should include for the violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. 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 such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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 20555-0001.

Because 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>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made

available to the public without redaction. 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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated this 22nd day of May 2007