

June 8, 2007

EA-07-127

Mr. Joe Kapelczak, President
JCK & Associates, Inc.
8615 Richardson Road, Suite 100
Commerce Township, MI 48374

SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION
NRC SPECIAL INSPECTION REPORT NO. 030-29931/2007-001(DNMS) -
JCK & ASSOCIATES, INC.

Dear Mr. Kapelczak:

This refers to the special inspection conducted at the JCK & Associates, Inc. facility in Novi, Michigan, and at your new business location in Commerce Township, Michigan on April 17 and 20, 2007. The purpose of the inspection was to verify the location and security of your three portable gauges. The inspection was an examination of activities conducted under your license as they relate to radiation safety and compliance with the Commission's rules and regulations and with the conditions of your license. Within these areas, the inspection consisted of selective examination of procedures and representative records, interviews with personnel, independent radiation measurements, and observations of licensed activities. Our inspection findings were discussed with you on April 20, 2007. The enclosed report presents the results of this inspection.

Based on information developed during the inspection, the NRC has determined that two violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. Regarding the first violation, on February 5, 2007, the NRC issued you an Order due to non-payment of the annual license fee. Section C of the Order required that, unless full payment was made, the licensee must, within 30 days from the date of the Order, arrange for disposal or transfer to an authorized recipient of any licensed nuclear material and take all actions required by 10 CFR 30.36. Such disposal was required to occur within 60 days from the date of the Order. Section F of the Order required that, within 65 days from the date of the Order, the licensee conduct a final radiation survey of the premises where the licensed activities were carried out and submit the results of the survey to the NRC. Section G of the Order required that, within 30 days from the date of the Order, the licensee submit a written report to the NRC. As of April 17, 2007, you had not complied with any of the terms and conditions of the Order.

The second violation involved your failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the gauges were not under the control and constant surveillance of the licensee as required by 10 CFR 30.34(i). Upon entry into an unlocked hallway/entryway, the inspector found the three gauges within their unlocked transportation cases. The transportation cases were not secured to the ground or adjacent equipment to prevent unauthorized removal.

Your failure to comply with the NRC order is a significant concern. Additionally, the failure to properly secure the portable gauges is a significant concern because it could have resulted in the loss or theft of the gauges. Therefore, each violation is categorized at Severity Level III. In accordance with the Enforcement Policy, civil penalties are normally considered for Severity Level III violations. However, after consultation with the Director, Office of Enforcement, the NRC is exercising enforcement discretion and is refraining from issuing civil penalties. Discretion is being exercised pursuant to Section VII.B.6 of the Enforcement Policy because you have transferred all licensed material to an authorized recipient; your NRC license has been terminated; and you have no intention of conducting NRC-licensed activities in the future. If our understanding of your intention to not conduct NRC-licensed activities in the future is incorrect, immediately contact Robert Gattone of my staff at (630) 829-9823.

Two additional violations were identified and are also cited in the enclosed Notice. The two violations involved failures to ensure that: (1) the Radiation Safety Officer was the individual named in the license; and (2) the gauges were stored at an authorized location. These violations have been categorized at Severity Level IV and were not considered for escalated enforcement action.

The NRC has concluded that information regarding the reason for the four violations, the corrective actions taken and planned to correct the violations and the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 030-29931/2007-001(DNMS) (enclosed) and your letter to the NRC dated May 1, 2007. 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 the future, if you intend to apply for a new NRC license and engage in NRC-licensed activities, you are requested to notify, in writing, the Director, Division of Nuclear Materials Safety, Region III, Suite 200, 2443 Warrenville Road, Lisle, IL 60532-4351 of your intention. Your written notification should also describe how you would prevent violations of NRC requirements if a new license was issued.

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 any, 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>. If you choose to provide a written response to this letter, 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.

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

Docket No. 030-29931
License No. 21-24945-01

Enclosures:

1. Notice of Violation
2. Inspection Report No. 030-29931/2007-001(DNMS)

DISTRIBUTION:

See next page

*See previous concurrence

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DATE	05/29/07	05/31/07	05/31/07	05 /31 /07
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NAME	SAReynolds	PRPelke for KGO'Brien	JLCaldwell	
DATE	06/04/07	06 /04/07	06/08/07	

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Letter from J. Caldwell to J. Kapelczak dated June 8, 2007

SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION
NRC SPECIAL INSPECTION REPORT NO. 030-29931/2007-001(DNMS) -
JCK & ASSOCIATES, INC.

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NOTICE OF VIOLATION

JCK & Associates, Inc.
Commerce Township, Michigan

Docket No. 030-29931
License No. 21-24945-01(terminated)
EA-07-127

Based on an NRC inspection conducted on April 17 and 20, 2007, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

1. The NRC "Order Revoking License Following Immediately Effective 30-Day Suspension," dated February 5, 2007, Section C, required unless full payment is made, the licensee, within 30 days from the date of the Order, arrange for disposal or transfer to an authorized recipient of any licensed nuclear material acquired or possessed under the authority of License No. 21-24945-01 and take all actions required by 10 CFR 30.36. Such disposal must take place within 60 days from the date of the Order.

Section F of the Order required that within 65 days from the date of the Order, the licensee conduct a final radiation survey of the premises where the licensed activities were carried out, pursuant to 30.36(j), and submit a written report of the results of the survey to the Director, Division of Nuclear Materials Safety, for NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352.

Section G of the Order required that within 30 days from the date of the Order, the licensee submit a written report to the Director, Division of Nuclear Materials Safety, for NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352 that includes: (1) a listing of all materials disposed of, transferred, or still in the possession of the licensee, (2) a description of the conditions of storage of retained material and actions being taken to control access to the material, and (3) for any material not disposed of or transferred, a description of the actions taken to attempt to dispose of or transfer the material and why those actions were unsuccessful.

Contrary to the above, as of April 17, 2007, the licensee had not paid the license fee or disposed of three portable gauges, had not conducted a final radiation survey of the premises where the licensed activities were carried out, pursuant to 30.36(j), and had not submitted a written report to the Director, Division of Nuclear Materials Safety, for NRC Region III that included: (1) a listing of all materials disposed of, transferred, or still in the possession of the licensee, (2) a description of the conditions of storage of retained material and actions being taken to control access to the material, and (3) for any material not disposed of or transferred, a description of the actions taken to attempt to dispose of or transfer the material and why those actions were unsuccessful.

This is a Severity Level III Violation (Supplement VI).

2. 10 CFR 30.34(i) requires each portable gauge licensee to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on April 17, 2007, the licensee failed to use two independent physical controls that formed tangible barriers to secure three portable gauges, containing NRC licensed material, from unauthorized removal when the portable gauges were not under the control and constant surveillance of the licensee. Specifically, the licensee stored the gauges in unlocked transportation cases (with the source rods locked) located inside an unoccupied, unlocked hallway. The transportation cases were not under the licensee's constant control, were not secured, and could be accessed by unauthorized individuals.

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

3. Condition 12 of License No. 21-24945-01 names Brian Kozlowicz as the Radiation Safety Officer for this license.

Contrary to the above, from approximately December 2005 to April 17, 2007, Brian Kozlowicz had not served as the Radiation Safety Officer for this license.

This is a Severity Level IV Violation (Supplement VI).

4. 10 CFR 30.34(c) requires, in part, that each licensee confine his possession and use of byproduct materials to the locations and purposes authorized by the license. Condition No. 10 of NRC License No. 21-24945-01 requires, in part, that licensed material be used or stored at the licensee's facilities located at 45650 Grand River Avenue, Novi, Michigan.

Contrary to the above, the licensee failed to store licensed material at the licensee's facilities located at 45650 Grand River Avenue, Novi, Michigan. Specifically, as of April 2007, the licensee stored three moisture density gauges at 8615 Richardson Road, Commerce Township, Michigan, a storage location not authorized by the license.

This is a Severity Level IV Violation (Supplement VI).

If you contest this enforcement action, you should provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 030-29931/2007-001(DNMS) and a letter from the licensee dated May 1, 2007. Therefore, you are not required to respond to this Notice.

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-07-127," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk Washington, DC 20555-0001 with a copy to the Regional Administrator and the Enforcement Officer, Region III, within 30 days of the date of the letter transmitting this Notice of Violation.

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 8th day of June 2007

U.S. NUCLEAR REGULATORY COMMISSION

REGION III

Docket No. 030-29931

License No. 21-24945-01

Report: 030-29931/2007-001(DNMS)

Licensee: JCK & Associates, Inc.

Locations Inspected: 45650 Grand River, Novi, Michigan (former facility and authorized location of use)

8615 Richardson Road, Suite 100, Commerce Township, Michigan (new facility--not authorized on license)

Dates: April 17 and 20, 2007

Final Exit Meeting: April 20, 2007

Inspector: Deborah A. Piskura, Health Physicist

Approved by: Robert G. Gattone, Jr., Acting Chief
Materials Inspection Branch

EXECUTIVE SUMMARY

**JCK & Associates, Inc.
Commerce Township, Michigan
NRC Inspection Report No. 030-29931/2007-001(DNMS)**

JCK & Associates, Inc. (licensee) possessed three portable gauges containing cesium-137 and americium-241 in sealed sources. On February 5, 2007, the NRC issued an "Order Revoking License Following Immediately Effective 30-day Suspension (Order)," to the licensee revoking the license for non-payment of the annual license fee. The Order required, in part, that the licensee submit a written report to NRC Region III by March 7, 2007, that includes (1) a listing of all materials disposed of, transferred, or still in the possession of the licensee, (2) a description of the conditions of storage of retained material and actions being taken to control access to the material, and (3) for any material not disposed of or transferred, a description of the actions taken to attempt to dispose of or transfer the material and why those actions were unsuccessful. The licensee did not submit the required written report. The Order also required, in part, that the licensee divest itself of all licensed material by April 6, 2007, or pay the annual license fee, and no annual fee was paid. Therefore, an inspector conducted a special inspection on April 17, 2007, to verify the location and security of the portable gauges.

The inspector identified four violations of NRC regulatory requirements that involved failure to: (1) comply with the terms and conditions of the Order; (2) use two independent physical controls that formed tangible barriers to secure three portable gauges from unauthorized removal as required by 10 CFR 30.34(i); (3) have the named Radiation Safety Officer as required by the license; and (4) store licensed materials at the facility authorized by the license.

The licensee transferred its gauges to the manufacturer on April 19, 2007, and filed a license termination request on May 1, 2007. The NRC terminated the license on May 4, 2007. The licensee's president stated that he did not foresee use of licensed material in the future.

Report Details

1 Program Scope and Inspection History

JCK & Associates, Inc. (licensee) is a private consulting and engineering company that employs seven individuals. The licensee possessed three moisture/density gauges (gauges) that contained cesium-137 and americium-241 in sealed sources. The gauges were last used during the construction season in the summer of 2005. The licensee did not perform any service or maintenance activities on its gauges; those services were performed by the gauge manufacturer.

No violations were identified during the last NRC inspection that was conducted on September 3, 2003. Two violations of NRC requirements were identified during the previous inspection that was conducted on September 18, 1996.

2 Non-Payment of License Fee and Associated License Revocation Order

2.1 Inspection Scope

The inspector interviewed the licensee's president and read selected records to review the licensee's compliance with the "Order Revoking License Following Immediately Effective 30-Day Suspension" (Order) due to non-payment of the annual license fee.

2.2 Observations and Findings

The licensee was sent an invoice dated April 3, 2006, requesting payment of NRC's annual license fee of \$2,500 as required by 10 CFR Part 171, "Annual Fees for Reactor Licensees and Fuel Cycle Licensees and Materials Licensees, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC." The NRC sent a second notice dated May 4, 2006, requesting payment. The licensee entered into an installment agreement on September 19, 2006, and submitted one \$300 payment. On October 18, 2006, the licensee defaulted on the payment installment agreement.

On February 5, 2007, the NRC issued the Order due to non-payment of the license fee. Section C of the Order required that, unless full payment is made, the licensee must, within 30 days from the date of the Order, arrange for disposal or transfer to an authorized recipient of any licensed nuclear material acquired or possessed under the authority of the license and take all actions required by 10 CFR 30.36, "Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas." Such disposal was required to occur within 60 days from the date of the Order.

Section F of the Order required that, within 65 days from the date of the Order, the licensee conduct a final radiation survey of the premises where the licensed activities were carried out, pursuant to 30.36(j), and submit a written report of the results of the survey to the NRC.

Section G of the Order required that, within 30 days from the date of the Order, the licensee submit a written report to the NRC that includes: (1) a listing of all materials disposed of, transferred, or still in the possession of the licensee, (2) a description of the conditions of storage of retained material and actions being taken to control access to the material, and (3) for any material not disposed of or transferred, a description of the actions taken to attempt to dispose of or transfer the material and why those actions were unsuccessful.

As of April 17, 2007, the licensee had not paid the license fee or disposed of three portable gauges, had not conducted a final radiation survey of the premises where the licensed activities were carried out, and had not submitted a written report to the NRC that included: (1) a listing of all materials disposed of, transferred, or still in the possession of the licensee, (2) a description of the conditions of storage of retained material and actions being taken to control access to the material, and (3) for any material not disposed of or transferred, a description of the actions taken to attempt to dispose of or transfer the material and why those actions were unsuccessful. The licensee's failure to pay the license fee or dispose of three portable gauges, conduct a final radiation survey of the premises where the licensed activities were carried out, and submit a written report to the NRC that included the required information is a violation of the Order.

2.3 Conclusions

The inspector identified a violation of the Order involving the licensee's failure to pay the license fee or dispose of three portable gauges, conduct a final radiation survey of the premises where the licensed activities were carried out, and submit a written report to the NRC.

3 Security of Byproduct Material

3.1 Inspection Scope

The inspector reviewed gauge security by interviewing the licensee's president and selected licensee personnel, observing selected licensee activities, reviewing selected records, and touring selected licensee facilities.

3.2 Observations and Findings

Upon entry into an unlocked hallway/entryway, which was shared space between the licensee and another building tenant, the inspector found the three gauges within their unlocked transportation cases. The transportation cases were not secured to the ground or adjacent equipment to prevent unauthorized removal. The inspector noted that all three of the cesium-137 source rods were locked.

Title 10 CFR 30.34(i) requires that each portable gauge licensee use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the gauges are not under the control and constant surveillance of the licensee. The failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the gauges are not under the control and constant surveillance of the

licensee is a violation of 10 CFR 30.34(i). The inspector determined that the licensee's president was unaware of the requirements in 10 CFR 30.34(i).

The inspector requested that the licensee secure the gauges in another location to limit gauge access to authorized licensee personnel. The gauges were relocated to a secured storage closet that was accessible only to licensee personnel. The licensee was unable to take additional measures to secure the gauges within the closet because the space was loaned as a courtesy by another building tenant. However, the licensee stored its gauges without incident for two days until it transferred the gauges to the device manufacturer for disposal on April 19, 2007.

The licensee filed a license termination request on May 1, 2007. The NRC terminated the license on May 4, 2007. The licensee's president stated that he did not foresee use of licensed material in the future.

3.3 Conclusions

The inspector identified a violation of 10 CFR 30.34(i) regarding the licensee's failure to secure three portable gauges with a minimum of two independent physical controls that form tangible barriers to secure the portable gauges from unauthorized removal, when not under the control and constant surveillance of the licensee. The licensee subsequently transferred the gauges to the manufacturer for disposal and took actions to terminate its NRC license.

4 **Radiation Safety Officer**

4.1 Inspection Scope

The inspector interviewed the licensee's president and other licensee staff to review licensee oversight of the gauges.

4.2 Observations and Findings

The inspector identified that the individual named in Condition 12 of NRC License No. 21-24945-01 as the Radiation Safety Officer (RSO) left the licensee's employ in approximately December 2005. The licensee's president had been fulfilling the duties of the RSO since late 2005. The licensee's president was technically qualified to be the RSO because he successfully completed the required training. From approximately December 2005 to April 17, 2007, the licensee had not taken actions to amend its license to name a new RSO.

Condition 12 of NRC License No. 21-24945-01 names Brian Kozlowicz as the licensee's RSO. The licensee's failure to ensure that its RSO was the individual named in Condition 12 of its license is a violation of the license. The licensee's president was unaware that a license amendment was required to change the individual named in Condition 12 for new RSO authorization.

4.3 Conclusions

The inspector identified a violation of Condition 12 of License No. 21-24945-01 involving failure to ensure that the RSO was the individual named in the license.

5 Location of Use

5.1 Inspection Scope

The inspector toured the licensee's facilities, interviewed the licensee's president and other personnel, and observed selected licensee activities to review the facilities where the gauges were stored.

5.2 Observations and Findings

Upon arrival at the licensee's authorized facility at 45650 Grand River Avenue, Novi, Michigan on April 17, 2007, the inspector observed that the licensee's business offices appeared vacant. The inspector identified that the licensee vacated the building in early April 2007. The inspector located the new business location at 8615 Richardson Road, Suite 100, Commerce Township, Michigan and met the licensee's president. The inspector noted that the licensee stored three portable gauges at the Commerce Township, Michigan office.

Title 10 CFR 30.34(c) requires, in part, that each licensee confine his possession and use of byproduct materials to the locations and purposes authorized by the license. Condition 10 of NRC License No. 21-24945-01 requires, in part, that licensed material may be stored at 45650 Grand River Avenue, Novi, Michigan. The licensee's storage of gauges at 8615 Richardson Road, Suite 100, Commerce Township, Michigan is a violation of 10 CFR 30.34(c) and Condition 10 of License No. 21-24945-01. The inspector determined that licensee representatives were unaware that storage of gauges at a location other than that authorized in Condition 10 of the license was a violation of NRC regulatory requirements.

5.3 Conclusions

The inspector identified a violation of 10 CFR 30.34(c) and Condition 10 of License No. 21-24945-01 involving failure to store gauges at an authorized location.

6 Exit Meeting Summary

The inspector discussed the preliminary conclusions with licensee management during the exit meeting conducted at the licensee's facility on April 20, 2007. The licensee did not identify any information reviewed during the inspection and proposed for inclusion in the inspection report as proprietary in nature.

List of Personnel Contacted

- #*Joe Kapelczak, President
- #*Patty DeAngelis, Office Assistant
- # Individual(s) present at entrance meeting
- * Individual(s) present at exit meeting