

July 31, 2007

IA-07-010

John M. Branyan
HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)

SUBJECT: YOUR LETTER, DATED JUNE 18, 2007, IN RESPONSE TO NRC NOTICE OF VIOLATION ISSUED ON MAY 22, 2007

Dear Mr. Branyan:

On May 22, 2007, the NRC issued you a Notice of Violation (NOV) for your deliberate failure to report missing NRC licensed material, while you were employed as an Assistant Radiation Safety Officer (ARSO) by U.S. Engineering Laboratories, Inc. (USEL). The violation was classified at Severity Level III.

On June 18, 2007, you responded to the NOV and disputed the violation. You also contended that a Severity Level III classification of the violation was not warranted. You provided your basis for disputing the violation, as well as the corrective steps that have been taken, and will be taken, to avoid further violations.

We have reviewed the information you provided in your response. After considering that information, the NRC has concluded that you did not provide an adequate basis for retracting the violation or changing the severity level. The NRC evaluation of your response is described in detail in the attached enclosure. We have no further questions regarding your corrective actions.

This letter, as well as your response and the NOV, will be made publicly available either electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). 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 our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Enclosure: As Stated

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Sincerely,
/RA/
Samuel J. Collins
Regional Administrator

Enclosure: As Stated

SUNSI Review Complete: RCR (Reviewer's Initials)

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Attachment to IA 07-010
John M. Branyan former employee of
U.S. Engineering Laboratories Inc.
License No. 29-30107-01
Docket No. 030-33387

Background

On May 22, 2007, a Notice of Violation (Notice) was issued to a former employee of U.S. Engineering Laboratories (USEL) based on the results of an NRC inspection and investigation. The NRC concluded that the individual engaged in deliberate misconduct that caused the licensee to fail to immediately report a missing nuclear density gauge containing licensed material, which was later found abandoned in a wooded lot on March 2, 2006. The individual responded to the Notice of Violation in a letter dated June 18, 2007. The individual disputes the violation and the severity level of the violation.

Restatement of the Violation

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 (ARSO) 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).

Summary of the Individual's Response Disputing the Violation and its Severity Level

In his response, dated June 18, 2007 and received by the NRC on June 22, 2007, the individual, who was the former Assistant Radiation Safety Officer (ARSO), contends that, while he did not immediately notify the Radiation Safety Officer (RSO) of the fact that he was unsure of the whereabouts of this particular gauge, he did report this to the USEL Senior Vice President and in the presence of the Director of Geotechnical Engineering and the Marketing Manager. The former ARSO also restated that he did not feel that the gauge was missing, but rather that it was mistakenly left at a job site or removed from the Broomall office by another user who did not properly document this on the sign-out log. Further, the former ARSO stated that while he did err in not reporting the missing gauge to the RSO, he reported it to USEL management, so he disputes the finding that he "deliberately failed to report a missing gauge, thereby causing USEL to violate 10 CFR 20.2201." The former ARSO also stated that he feels a Severity Level III violation is excessive in this case.

NRC's Evaluation of the Individual's Response Disputing the Violation and its Severity Level

The NRC has evaluated the former ARSO's response to the Notice of Violation and has determined that he did not provide justification for the NRC to retract the violation, or to reduce its Severity Level. Specifically, the individual was cited for deliberate misconduct because: he did not know where the gauge was and could not find it; he admitted that the gauge was not under his control; and he was knowledgeable of the NRC license requirements for control of the material, as well as the requirements to immediately report lost or stolen material to the NRC. Assuming that the former ARSO reported this information to the former USEL Senior Vice President, that notification does not obviate the need for the former ARSO to ensure that the NRC reporting requirements are met by informing the RSO or otherwise ensuring that USEL immediately notify the NRC. The former ARSO acknowledged that USEL procedures provided that he was supposed to inform the RSO, who would then notify the NRC. In an OI interview, the Senior Vice President stated that when the former ARSO told him that he could not find the gauge, the Senior Vice President communicated to the former ARSO that he should look for the gauge and if it was not found the next day, that the former ARSO should report the missing gauge incident to the RSO. He did not report the loss of the gauge to the RSO or take any other action to ensure notification to the NRC.

In addition, the former ARSO attended a predecisional enforcement conference (PEC) with the NRC on October 12, 2005, regarding the licensee's failure to control licensed material based on a 2004 incident in the USEL Rahway, NJ, office. Given the corrective actions that were described during that PEC, the former ARSO should have been well aware of the requirements for proper storage of gauges and for immediately reporting a missing nuclear gauge to the NRC. During that PEC, the former ARSO did not identify to the NRC or to the RSO that there was a second missing nuclear gauge that had been unaccounted for since September 30, 2005, even though the former ARSO was knowledgeable that a second gauge could not be found at that time. The NRC considers a gauge to be lost if its whereabouts are unknown or it cannot be found.

With respect to the severity level for the subject violation, while most transgressions of individuals resulting in violations at Severity Level III or IV will be handled by citing the licensee, violations involving the integrity of an individual concerning matters within the scope of the individual's responsibilities will be considered for enforcement action against the individual as well as the licensee. The former ARSO was assigned the task of implementing the licensee's radiation safety program at the Broomall facility and was considered a member of management. The former ARSO knew the requirement for immediate notification and, after being told to inform the RSO of the lost gauge, the former ARSO still did not inform the RSO or the NRC. Therefore, in view of the radiological significance of a lost gauge, and the deliberate nature of the violation, the NRC concludes that a Severity Level III classification of the violation is appropriate.

NRC Conclusion

The NRC concludes that the former ARSO did not provide justification for the NRC to retract the violation, or to reduce the severity level of the violation.