



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

April 23, 2008

Docket No. 03014478
EA-08-073

License No. 45-18100-01

Michael C. Sun, P.E.
Director, Geotechnical Section
Burgess & Niple, Inc.
4160 Pleasant Valley Road
Chantilly, VA 20151

SUBJECT: INSPECTION 03014478/2008001, BURGESS & NIPLE, INC., CHANTILLY, VIRGINIA AND NOTICE OF VIOLATION, EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Sun:

On February 6, 2008, Sattar Lodhi of this office conducted a safety inspection at the above address of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The findings of the inspection were discussed with you and Darryl Keating of your organization at the conclusion of the inspection.

Based on the results of this inspection, it appears that your activities were not conducted in full compliance with NRC requirements. A Notice of Violation (Notice) is enclosed that categorizes each violation by Severity Level. Item A of the Notice describes a violation of 10 CFR 30.34(i). Although such violations are normally categorized at Severity Level III and are considered for escalated enforcement, we are exercising enforcement discretion to categorize the violation at Severity Level IV because: (1) one physical control existed to prevent loss or theft of the portable gauge; (2) you retained possession of the gauge; (3) you took appropriate action to correct the violation and prevent recurrence of similar violations in the future, and (4) the violation was not willful. However, any future violations of 10 CFR 30.34(i) will be categorized at Severity Level III and evaluated for a civil penalty in accordance with Section VI.C. of the Enforcement Policy.

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 should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your completed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

M. Sun

2

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material**; then **Regulations, Guidance, and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC; Organization and Functions; Office of Enforcement; About Enforcement**; then **Enforcement Policy**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 8:00 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Sattar Lodhi at (610) 337-5364, if you have any questions regarding this matter.

Sincerely,

/RA J. D. Kinneman for/

Brian E. Holian, Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Darryl Keating, Radiation Safety Officer
Commonwealth of Virginia

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material**; then **Regulations, Guidance, and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC; Organization and Functions; Office of Enforcement; About Enforcement**; then **Enforcement Policy**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 8:00 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Sattar Lodhi at (610) 337-5364, if you have any questions regarding this matter.

Sincerely,

/RA J. D. Kinneman for/

Brian E. Holian, Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Darryl Keating, Radiation Safety Officer
Commonwealth of Virginia

Distribution:
D. Holody,RI
A. DeFrancisco, RI
S. Woods,OE
L. Lopez, OE
L. Sreevinas, OE

DOCUMENT NAME: C:\FileNet\ML081160375.wpd
ADAMS Document Accession No. ML081160375

SUNSI Review Complete: SLozhi

After declaring this document "An Official Agency Record" it will be released to the Public.

To receive a copy of this document, indicate in the box: "C" = Copy w/o attach/encl "E" = Copy w/ attach/encl "N" = No copy

OFFICE	DNMS/RI	N	DNMS/RI	ORA/RI	DNMS/RI
NAME	Slozhi/MMiller / mtm*		Bholian/JDK for:*	Dholody/aed f/	Bholian/jdk f/
DATE	04/10/08		04/16/08	04/22/08	04/23/08

NOTICE OF VIOLATION

Burgess & Niple, Inc.
Chantilly, VA

Docket No. 03014478
License No. 45-18100-01

During an NRC inspection conducted on February 6, 2008, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 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 portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal. Specifically, on February 6, 2008, 12 portable gauges were stored at the licensee's facility in Chantilly, Virginia, and a lock at the storage entrance was the only physical control that formed a tangible barrier to secure the gauges from unauthorized removal. The gauge containers were not secured within the storage area.

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

- B. Condition 16 of License No. 45-18100-01 requires, in part, that each portable nuclear gauge or its container be locked when in storage or when not under the direct surveillance of an authorized user.

Contrary to the above, the licensee did not lock each portable gauge or its container while the gauge was in storage and not under the direct surveillance of an authorized user. Specifically, on February 6, 2008, a Troxler Model 4640B with serial number 1555 and a CPN Model MC1 with serial number 15035921 were stored in the storage facility and neither the gauges nor their containers were locked.

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

Pursuant to the provisions of 10 CFR 2.201, Burgess & Niple, Inc. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 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). This reply should be clearly marked as a "Reply to a Notice of Violation, EA-08-073" and should include for each 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. 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. 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 to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated This 23rd day of April 2008