

May 9, 2008

IA No. 08-014

Joseph S. Shepherd
1621 South Lyndon Street, Apartment A
South Pasadena, CA 91030-3859

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT NO. 4-2005-004

Dear Mr. Shepherd:

This letter is in reference to an investigation conducted by the U. S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV) involving Source Production and Equipment Company, Inc. (SPEC), an NRC licensee pursuant to 10 CFR Part 110. The purpose of the investigation was to determine whether you, as a consultant or contractor to SPEC, deliberately violated the NRC Certificate of Compliance (CoC) requirements regarding a Model No. 5979 shipping package, serial number 1B. A factual summary of OI Investigation 4-2005-004 is enclosed.

Based on the results of the OI investigation, the NRC staff has identified three apparent violations of 10 CFR 110.7b, "Deliberate misconduct," which are being considered for escalated enforcement action in accordance with the "NRC Enforcement Policy" (Enforcement Policy). The current Enforcement Policy is included on the NRC's web site at www.nrc.gov; select **About NRC, Organization and Functions, Office of Enforcement, About Enforcement**, then **Enforcement Policy** and select "**(Enforcement Policy)**" to open the full document.

First, contrary to 10 CFR 110.7b(a)(2), on or about July 15, 2003, and December 4, 2003, you deliberately provided materially inaccurate information to SPEC in two checklists and in shipping papers concerning inspections of the Model No. 5979 shipping package. You signed "OK" on the checklist and certified on the bills of lading that the package conformed to all national governmental regulations, signifying that you had performed the inspection and that the package conformed to CoC requirements. In fact you did not fully perform the inspection required by the CoC before each shipment, including certain steps of the maintenance procedures. The inaccurate information was material because it concealed that SPEC failed to conform to the CoC requirement that before shipment of the package, an inspection must be performed which includes those steps.

Contrary to 10 CFR 110.7b(a)(1), you deliberately caused SPEC to violate 10 CFR 71.3, "Requirement for license", by providing materially inaccurate checklists and bills of lading to SPEC on or about July 15, 2003 and December 4, 2003. In accordance with 10 CFR 71.17, "General license; NRC-approved package", a general license to deliver or transport licensed material in a package with an NRC CoC is granted only to a licensee who complies with the terms and conditions of the CoC. SPEC relied upon your representations that you had completed all steps of the package inspection required by the CoC. As a result, SPEC did not comply with the COC before SPEC delivered for transport and transported licensed material in the Model No. 5979 shipping package, and violated 10 CFR 71.3.

Second, contrary to 10 CFR 110.7b(a)(2), on or about May 20, 2004, you deliberately provided materially inaccurate information to SPEC in a checklist and in a bill of lading concerning an inspection of the Model No. 5979 package. You signed "OK" on the checklist and certified on the bill of lading that the package met all national governmental regulations, signifying that you had performed the inspection and that the package met all CoC requirements. In fact, you were not present and did not conduct any inspection of the CoC No. 5979 package. The inaccuracies were material because they concealed that your associate who did the inspection was not authorized or qualified to perform the inspection on SPEC's behalf, and concealed that certain steps required by the maintenance inspection procedures were not performed.

Contrary to 10 CFR 110.7b(a)(1), you deliberately caused SPEC to violate 10 CFR 71.3, "Requirement for license", by providing a materially inaccurate checklist and bill of lading to SPEC on or about May 20, 2004. In accordance with 10 CFR 71.17, "General license; NRC-approved package", a general license to deliver or transport licensed material in a package with an NRC CoC is granted only to a licensee who complies with the terms and conditions of the CoC. SPEC relied upon your representations that you had completed all steps of the package inspection required by the CoC. As a result, SPEC did not comply with the COC before SPEC delivered for transport and transported licensed material in the Model No. 5979 shipping package, and violated 10 CFR 71.3.

Third, contrary to 10 CFR 110.7b(a)(2), you deliberately provided materially inaccurate information to SPEC around May 2004 and again in an e-mail of April 12, 2005, when you told SPEC that you had not authorized any modifications to the Model No. 5979 package. You told SPEC personnel that the only modifications to the package were holes drilled in the turret by someone else in Mexico. In June 2005, shortly after an OI interview in which you admitted to having authorized modifications to the package, you told SPEC that you did in fact authorize modifying the end caps by drilling larger holes. The inaccurate information was material because it concealed that the shipping package was rendered nonconforming by the modification you had authorized, and concealed that SPEC had delivered for transport or transported licensed material in a certified container without the license required by 10 CFR 71.3.

Before the NRC makes its enforcement decision, we are providing you with the opportunity to participate in a predecisional enforcement conference (PEC), at the NRC headquarters office, to discuss the apparent violations.

If you attend a PEC, it would be closed to the public and transcribed. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken against you. The purpose of the conference is to obtain information to assist the NRC in making an enforcement decision by: (1) discussing the apparent violations and surrounding circumstances; and (2) giving you an opportunity to provide your perspective and any other information you believe is relevant to the NRC enforcement decision. The PEC may include information to determine whether violations occurred, information to determine the significance of each violation, information related to the identification of the violations, and information related to any corrective actions taken or planned. You are specifically invited to address the factors that the NRC would consider in determining whether enforcement action should be taken against you. These factors are described in Section VIII, "Enforcement Actions Involving Individuals" of the NRC Enforcement Policy (link to the NRC Enforcement Policy provided previously in the second paragraph).

If a PEC is agreed upon and scheduled, an agenda for the PEC will be provided in advance of the conference. Although not required, you may choose to provide the NRC with a written reply to the apparent violation prior to or during the PEC. In addition, you may have an attorney or personal representative attend the conference; however, you should understand that the NRC will address its questions to you. Furthermore, you are not required to attend a PEC after you have decided to request the PEC. However, you should understand that, if you do not attend a PEC, the NRC will make an enforcement decision on the basis of the information developed during the investigation.

If the NRC concludes that you deliberately caused or committed a violation of NRC requirements, the possible sanctions include a Notice of Violation, a civil penalty, or an Order. An Order may prohibit involvement in NRC-licensed activities, require notice to the NRC before resuming involvement in NRC-licensed activities, or require other action. After NRC completes its deliberations on this matter, you will be advised of the outcome by separate correspondence.

Please contact David Pstrak at (301) 492-3299 within 10 days of the date of this letter to notify the NRC of your decision to participate in the PEC.

A copy of this letter and its enclosures will not be made publicly available at this time. However, if the NRC subsequently issues an enforcement action to you, in accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, and enclosures to this letter 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>. 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>.

Your cooperation is appreciated.

Sincerely,

/RA/

E. William Brach, Director
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

Enclosure:
Factual Summary of OI Investigation
Report No. 4-2005-004

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/RA/

E. William Brach, Director

Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety and Safeguards

Enclosure:

Factual Summary of OI Investigation
Report No. 4-2005-004

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FACTUAL SUMMARY
OFFICE OF INVESTIGATIONS REPORT NO. 4-2005-004

An investigation was initiated by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV, on May 4, 2005, to determine if a consultant/contractor to Source Production and Equipment Company (SPEC), St. Rose, Louisiana, a registered user of Model No. 5979 shipping package and an NRC-approved Quality Assurance Program holder, deliberately violated the Certificate of Compliance (CoC) requirements regarding its use of a Model No. 5979 shipping package, serial number 1-B.

During his inspection of the package on July 15, 2003, and on December 4, 2003, the consultant/contractor signed "OK" on all applicable steps of the abbreviated Foss Therapy Systems (FTS) prepared inspection checklist, and certified on the bill of lading that the package conformed to all national governmental regulations, signifying that he had performed all steps of the inspection as required by the CoC. The consultant/contractor then provided the checklists and bills of lading to SPEC. In fact, the consultant/contractor did not perform step 2.4.A. of the FTS inspection checklist. During the consultant/contractor's inspection, he did not ask Southwest Research Institute (SWRI) to, and SWRI did not, remove the six cask screws. As a result, the consultant/contractor could not have performed step 2.4.A.

The consultant/contractor testified that with respect to a package inspection on May 20, 2004, he was not present and did not perform any of the inspection. Nonetheless, he signed "OK" on the inspection checklist and certified on the bill of lading that the package conformed to all national governmental regulations, signifying that he had performed all steps of the inspection as required by the CoC. The person who inspected the package was not qualified to do so and did not perform all required steps of the inspection, including Sections 2 and 3.1 of the CoC maintenance procedures. The consultant/contractor then provided the checklist and bill of lading to SPEC.

Around May 2004 the consultant/contractor told the Regulatory and Quality Manager of SPEC and the Vice President of SPEC that he had never authorized modifications to the package. The consultant/contractor told them that the only modifications in the package were holes drilled in the turret by someone else in Mexico. In an e-mail of April 12, 2005, the consultant/contractor told the Regulatory and Quality Manager of SPEC that he had not authorized modifications to the package. The consultant/contractor later testified in June 2005 that he had authorized a modification to drill larger holes in the end caps. In July 2002, the contractor/consultant had requested and authorized SWRI to enlarge the holes in the end caps, which was done in August and September 2002.

The consultant/contractor testified that he knew that not complying with the requirements of the CoC would render the Model No. 5979 cask nonconforming.

Enclosure

